UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/HUN/2000/4 *
13 March 2001

Original: English

HUMAN RIGHTS COMMITEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

HUNGARY

[18 December 2000
sent earlier in 1999, but not
processed for technical reasons]

* This report is issued without editing, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

GE.01-40099

ENG

The Fourth Periodic Report of the Government of the Republic of Hungary on the Implementation of the International Covenant on Civil and Political Rights

General Remarks

1. The Government of the Republic of Hungary submits its Fourth Periodic Report to the Human Rights Committee on the basis of Article 40 of the International Covenant on Civil and Political Rights. As a State Party to the International Covenant on Civil and Political Rights, Hungary presented its First Periodic Report on the implementation of the Covenant May 16, 1977. The report was discussed August 19, 1977, at the 2nd Session of the Human Rights Committee (C/1 Add.11).

2. Hungary submitted its Supplementary Report in 1979. This Supplementary Report was discussed by the Human Rights Committee at its 10th Session, August 17-18, 1980 (C/1 Add. 44).

3. The Second Periodic Report was submitted July 8, 1985, and was discussed by the Committee at its 28th Session, July 14, 15, and 18, 1986 (C/37 Add. 1.).

4. The Hungarian Government submitted its Third Periodic Report October 28, 1991. This report was discussed at sessions 1240-1242 of the Human Rights Committee, July 15-16, 1993 (CCPR/C/64/Add. 7).

5. Regarding the general description of Hungarian society, as well as the political and legal system of Hungary, reference is made to Core Document HR 1/CORE/1/1/Add. 11.

6. The previous Periodic Report of Hungary illustrated the profound changes in Hungarian society, as well as the coming into existence of institutions of a pluralist society, a functioning democracy and the rule of law in Hungary. The present, Fourth Periodic Report has the basic intention, on the one hand, to describe the new legal institutions that have been established with a view to strengthening democratic achievements and, on the other, to give a comprehensive survey of the everyday working practices and methods of, as well as the concrete results achieved by, the Hungarian authorities.

Article 1

7. There has been no change since the last report.

Article 2

1.

8. Under Article 70/A of the Constitution, the Republic of Hungary ensures to all individuals within its territory human and civil rights, without distinction of any kind, such as race,

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

9. Act XXII of 1992 on the Labour Code, which entered into force July 1, 1992 (see text in Annex 3), in conformity with the international obligations assumed by the Republic of Hungary, prohibits distinction of any kind to be made between employees.

10. Paragraph 5 of the Labour Code prohibits discrimination between employees on the grounds of their sex, age, nationality, race, origin, religion, political conviction, membership in an employees' interest-representation organisation or their activity connected therewith, or any other circumstance not related to their employment. The prohibition of discrimination was already stipulated in the previous Labour Code Act II of 1967, but the new Code has supplemented this provision with the prohibition of distinction to be made on the grounds of membership in an employees' interest-representation organisation or activity connected therewith and the rule that circumstances unconnected with the employment shall not be taken into account.

11. The prohibition of discrimination on the grounds of circumstances extraneous to the employment formulates, in the form of a prohibition, the principle that, both at the time of the establishment and during the continuance of the employer--employee relationship, differentiation may only be made between employees on the grounds of facts relevant to their employment, as the prohibition of discrimination excludes those circumstances which do not bear on the performance of one's duties at the time of the establishment and the termination of the employment, as well as during the entire period of employment.

12. Under the Labour Code, differentiation arising from the character or nature of the work does not fall within the definition of discrimination. Accordingly, it should not be regarded as a restriction if the employer makes selection for a specified job conditional on certain qualifications or experience, provided the duties to be performed do justify this; or if, for instance, the differentiation is based on performance.

13. Also falling outside the concept of discrimination is an order or measure whose aim is to take into account the special needs of individuals recognised as requiring increased protection or assistance. This forms the basis of prohibitions which forbid the employment, in certain jobs or under certain types of working conditions, of women, juveniles, pregnant women or mothers taking care of young children or, in the case of certain jobs, stipulate specific health requirements.

14. Under the relevant provision of paragraph 75 of the Labour Code, no woman or juvenile shall be employed for work which, in view of their level of development, may have harmful consequences for them. The jobs in which women or juveniles cannot be employed, or where they can be employed only if certain specified working conditions have been ensured based on a preliminary medical examination, are defined by legislation.

15. The Labour Code also makes it possible for a rule (statute, collective contract) to prescribe preferences to be given, in connection with the employment, to a specified group of employees where identical conditions exist.

16. The rule on the prohibition of discrimination -- given that Act XXXIII of 1992 on the legal status of public employees and Act XXII of 1992 on the legal status of public servants also prescribes the application of the rule -- is also observed among public employees and public servants.

17. Act IV of 1991 on the promotion of employment and provision for the unemployed also extends the prohibition of discrimination to provisions for the unemployed. Under paragraph 2 of the Act, no discrimination shall be practised, in the course of promoting employment and providing for the unemployed, between employees and the unemployed on the grounds of their sex, age, race, origin, religion, political conviction, and membership in an employees' organisation.

18. In the interest of protection against discrimination, paragraph 5(2) of the Labour Code prescribes the use of *mitigating/extenuating* evidence in legal disputes relating to discrimination; in a legal dispute, it is incumbent on the employer to prove the legality of his/her proceedings, instead of the aggrieved party having to prove that he/she has been the subject of discrimination.

19. The observance of the rules concerning the prohibition of discrimination is monitored by the National Inspectorate for Labour Safety and Labour Protection, as well as by inspectors based in the capital and the county seats.

20. Infringement of this prohibition, as well as infringement of the rules concerning the employment of women and juveniles, falls under the category of misdemeanours and is liable to a fine of up to 30,000 HUF.

21. In addition to paragraph 58 of the Constitution (see text in Annex 1), legislators, when drafting the legislation on the entry, stay in Hungary, and immigration of foreigners (Act LXXXVI of 1993, Government Decree 64/1994 (IV. 30.) as well as Interior Minister's order 9/1994 (IV. 30.)), as subsequently modified, took into account the prohibition of discrimination, embodied in the Covenant, and the freedom of movement.

22. The preamble to Act LXXXVI of 1993 on the entry, stay in Hungary, and immigration of foreigners (hereinafter Immigration Act (see text in Annex 4) also refers to the consistent enforcement of the provisions of the two International Covenants of the UN; moreover, under its statutory provisions, the entry, stay in Hungary, and immigration of foreigners can be restricted only in accordance with the provisions laid down in the law. In addition, this law prohibits discrimination in the adjudication of applications for immigration (para. 22(4)). It is an important rule and safeguard that a foreign individual shall not be sent back or expelled to a country or to a border where he/she would be exposed to the danger of persecution, torture, inhuman or degrading treatment (para. 32(1)) because of his/her race, religion, nationality, membership in a particular social group or his/her political belief.

23. Provisions similar to those above are contained in Act CXXXIX of 1997 on Asylum, enacted by Parliament on December 9, 1997, (see text of the Act in Annex 18), under 2. §. (c) of which "a temporarily protected person is a foreigner who cannot be sent back to his/her native country because he/she would be exposed to capital punishment, torture, inhuman or degrading treatment -- provided that the refugee office has recognised him/her as a temporarily protected person."

24. As regards Hungary's record on the implementation of Article 2 of the Covenant, reference is made to the Resolution of the National Assembly 113/1997. OGY, in which Parliament revoked the declaration under Chapter 1, Article (B), (1) of the 1951 Convention relating to the Status of Refugees, which represented a territorial restriction on the application of the Convention. Accordingly, as of the entry into force of the law on asylum (March 1, 1998), refugees from outside Europe may also apply to the Hungarian authorities for refugee status.

25. In considering the cases of asylum-seekers and in the application of the law by the authorities, the prohibition of discrimination is a generally accepted and applied basic principle, in conformity with the 1951 Geneva Convention (promulgated by Law-Decree 15 of 1989) and the decree on requests for asylum, Decree of the Council of Ministers (101/1989 (IX.28)), pursuant to which no discrimination shall be practised between the applicants on any grounds whatsoever.

26. Individuals falling under the Immigration Act and the procedure for refugees are provided equal guarantees against discrimination by the fact that it is incumbent on the authorities responsible to obtain for the client an interpreter or otherwise ensure the use of his/her native language. Moreover, the law-enforcement/refugee organisations -- pursuant to their departmental rules and Act IV of 1957 on the general rules of state administrative procedure -- have, in regard to the entire proceedings, an obligation to provide the client with information (advisory instruction). Beyond these, safeguards are provided in both procedures through an elaborate system of legal remedies (e.g. right to appeal to an administrative agency and/or legal remedy in a court of law).

27. In respect of Article 2 (1), see also the Thirteenth Periodic Report (CERD/C/263/Add.6) on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, submitted by the Hungarian Government to the Centre for Human Rights on March 17, 1995, and debated in the Committee on March 6-7, 1996.

2.

28. The statutes in force are accessible to both private individuals and the administrators of the law. The official bulletin of the Republic of Hungary is "Magyar Közlöny" (Hungarian Law Gazette). Hungarian Law Gazette contains all the statutes, international treaties, the resolutions and legal acts of Parliament and the Government, the directives and authoritative rulings of the Supreme Court, and the rulings of the Constitutional Court. Hungarian Law Gazette is a commercially available at bookstores and newsstands as well as by subscription.

29. A task shared between the Ministry of Justice and the Prime Minister's Office is the annual publication of The Official Collection of Laws and Decrees and the publication of The Collection of Laws in Force. These publications are available in printed form (hard copy) or on CD-ROM.

30. Court judges mainly receive the Hungarian Law Gazette, but a large number of the courts have also been furnished with CD-ROMs.

31. The official journal of the Supreme Court is "Bírósági Határozatok" (Court Decisions), [...] available commercially, and which contains the decisions of the Supreme Court which are important in interpreting the law.

32. Among those referred to above, it is the directives and authoritative rulings that are currently binding on the courts. However, Act LXVI of 1997 on the organisation and administration of the courts has brought substantial changes in this area. In addition to those available to it until now, the Supreme Court has been provided with a new instrument for unifying judicial law-application, called "unity of law application". The unity-of-law application adopted as a result of the procedure is, under the provisions of the law, binding for the courts; it must be published in the Hungarian Law Gazette, making it generally accessible to the public.

33. The present text of the Constitution (Article 7(2): "The legal system of the Republic of Hungary accepts the generally recognised rules of international law and, moreover, ensures consistency between the international obligations assumed and domestic law"). This provision clearly accepts the primacy of international treaties over internal law.

34. In connection with the discussion of the Third Periodic Report submitted by Hungary, the Human Rights Committee expressed concern that the Hungarian Constitution and legal system do not incorporate all the human rights enshrined in the Covenant, and that the status of the Covenant in the Hungarian legal system is not sufficiently clearly defined. In particular, the Committee was concerned about the eventual conflict over rights defined in the Covenant but not expressly guaranteed under Hungarian law (Comments of the Human Rights Committee, CCPR/C/79/Add.22, point 6).

35. Here is the summary of the developments which serve to prevent or to resolve a conflict of this kind. The majority of the legislation mentioned in this context were adopted after the drafting of the Third Report -- and, indeed, after the debate about that report; while some of their elements -- primarily the law on the Constitutional Court -- had been framed at an earlier time. However, it is necessary to refer to them in this report in order to provide an overall picture.

36. In 1990, at the time of the signing of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter European Human Rights Convention), Parliament adopted a resolution pursuant to which ratification of the Convention could only take place once a systematic review of the Hungarian legal system and legal practice had been carried out to check compatibility with the Convention. To this end, a Government Commission was set up, which, during 18 months of intensive work, carried out a review of the entire relevant legal system. Since the ratification of the Covenant, no review of this kind was undertaken -- and also in light of the fact that in 1988 Hungary became a party to the Optional Protocol -- one of the key criteria of the process was to make sure that the review also included the Covenant and all those pronouncements and decisions of the Human Rights Committee which affect its interpretation and application. Hence the scope of the survey was widened to include the General Comments of the Human Rights Committee, the decisions handed down by the Committee in complaint cases lodged with it on the basis of the Optional Protocol, and the legal practice of the European Commission and Court of Human Rights, as well as the text of the Covenant (and, of course, that of the European Human Rights Convention).

37. On the basis of the compatibility review, the Commission called for substantial amendments to be made in thirteen Acts. These amendments were made in several stages following the ratification (October 1992), of the Convention for the Protection of Human Rights and Fundamental Freedoms -- a process depending partly on the workload of Parliament, which, in the interest of the democratic transformation, is called on to tackle a serious amount of

legislative work in other areas as well. The Government Commission has also revealed areas in the legal system where lack of compatibility was caused not by the inadequacy of laws but by the lack of relevant legislation. Earlier, Hungary had no legislation governing data protection, the activity of the police and the national security organisations -- especially their activity connected with the application of secret methods -- and the operation of the media, particularly that of the electronic media, which inherently jeopardised the proper implementation of the provisions of Articles 17 and 19 of the Covenant.

38. The other area of harmonisation is the activity of the Constitutional Court. The Third Report of Hungary, especially items 21-24, set out the main provisions relating to the Constitutional Court. In this context reference is made to the relevant provisions of Act XXXII of 1989 on the Constitutional Court:

"Examination of inconsistency with an international treaty

44. § The Constitutional Court, ex officio or upon the motion of agencies or individuals specified in paragraph 21(3), shall examine the statute or other legal instrument of state administration from the standpoint of inconsistency with an international treaty.

45. § (1) If the Constitutional Court rules that a statute or other legal instrument of state administration of a rank equal with that of a law promulgating an international treaty or one of a lower rank is inconsistent with an international treaty, it shall, entirely or in part, annul the statute or other legal instrument of state administration inconsistent with the international treaty.

(2) As to the publication of the ruling of annulment and the legal consequences of the annulment, the provisions of paragraphs 41-43 shall prevail.

46. § (1) If the statute which the Constitutional Court declares to be inconsistent with an international treaty is of a higher rank than the law promulgating the treaty, it shall, based on a consideration of the circumstances and setting a time limit, call upon the authority or individual that concluded the international treaty or the legislative authority to resolve the conflict.

(2) The authority or individual called upon to resolve the conflict specified in (1) shall perform its duty within the time limit set.

47. § (1) If the Constitutional Court rules that the legislative authority has failed in its legislative duty arising from the international treaty, it shall, setting a time limit, call upon the authority responsible for the omission to perform its duty.

(2) The authority responsible for the omission shall perform its legislative duty within the time limit set."

39. It follows from the above that the Constitutional Court may annul a Hungarian statute which runs counter to an international treaty (such as the Covenant) or it may call upon the legislator to bring the Hungarian statute found to be inconsistent with the international treaty into line with the international treaty. In its judicial practice, the Constitutional Court has, in several instances, concluded that a particular Hungarian statute that had been contested was inconsistent with an international treaty. It has done so not only in the course of the procedure described in paragraphs 44-47 of the statute, quoted above, but also, on numerous occasions, through subsequent normative control -- that is, when it was examining particular Hungarian statutes to check against any incompatibility with the Hungarian Constitution. In a comprehensive review, where the Constitutional Court concluded that a particular statute was incompatible with the Constitution, it has, in several instances, reached its verdict --

particularly while examining statutes restricting freedom of expression -- by citing the relevant cases found in the case-law of the Human Rights Committee and the European Commission of Human Rights. Thus the activity of the Constitutional Court is also an important element in enhancing compatibility between the Covenant and the Hungarian legal system.

3. a)

40. To provide a safeguard for the implementation of the provisions of the Covenant, [...] an earlier practice was abolished in 1991, whereby, in the case of certain offences committed by an officer in the performance of his/her official duties, the head of the authority where the act in question had been committed was also competent to determine the matter. Therefore, the power to inquire into cases of ill-treatment committed by official persons (Act IV of 1978 on the Penal Code paragraph 226, see text, as modified by Act XVII of 1993 in Annex 20), extracting of confessions by force (Criminal Code, para. 227), illegal detention (Criminal Code, para. 228) and abuse of authority (Criminal Code, para. 225) lies exclusively with the prosecuting authorities, and these alone may conduct the investigation, with power to establish guilt pertaining to the courts. This is the safeguard for the fundamental principle that only a court is competent to adjudicate a criminal offence, a function that may not be performed within the jurisdiction of a commanding officer. The amendment of the Criminal Code (Act XVII of 1993) stiffened the penalties carried by particular offences committed by officers in the performance of their duties, while also abolishing certain privileged forms and thus recognising the increased danger that these actions pose to society.

41. Another important development in the service relations disciplinary procedure is the enactment of Act XXXIV of 1994 on the Police (see text in Annex 5). In a related move, a re-regulation was carried out of all the norms governing, on the one hand, the measures of the police and the application of those measures and, on the other hand, the disciplinary procedures to be taken against police officers in the event of a breach of the obligations defined above.

42. Admittedly, the prosecuting authorities are only able to deal with this new task in a gradual fashion; the effectiveness rate in ill-treatment cases is low, and it is plausible to assume that many cases remain unreported. On the other hand, the abuse of authority, owing to the multiplicity of the possible patterns of commission behaviour, cannot, in all cases, be assigned to the infringement of the rights protected in the Covenant, the majority of the cases represented grievances of a different type. The substantial variations in the number of disciplinary dismissals, the measures taken by commanding officers, and court judgements arising from these actions are to be explained by the changes mentioned in connection with the investigation of, and judicial proceedings applicable to, offences carried out by officers in the performance of their duties, by the difficulty of proof, and by the variable gravity of the actions. Whereas in the case of ill-treatment the success rate in identifying the perpetrators is 59 per cent, the comparable figure for illegal detention and the forcing of confessions, for instance, is over 80 per cent. All in all, it may be stated that the incidence of these offences committed by officers in the performance of their duties and, particularly, the number of non-appealable convictions are very low.

43. Concerning the place that the Covenant has in the legal system, especially in regard to Article 2(3), importance must be attached to the question of how wide the possibilities offered by the administration of justice are in the event of a violation of the rights embodied in the Covenant -- in other words, what the range of circumstances is under which there is a possibility of

recourse to the courts. Just how far the jurisdiction of the courts has widened in the past few years will be demonstrated under Article 14. Act XXVI of 1991 on the extension of the judicial review of administrative decisions may be regarded as a major step also in regard to the fulfilment of the obligations arising from Article 2 of the Covenant.

44. Under Act XXVI of 1991 on the extension of the judicial review of administrative decisions, a decision made in a state administrative matter pertaining to a public authority by an administrative agency or some other authority with jurisdiction to proceed in a matter of state administration can be reviewed by the courts. Under the Act, the client may, within 30 days counting from the communication of the decision, submit a petition to the court requesting a judicial review of the decision. However, resort to a petition of this kind may be made only when the right of appeal in the administrative procedure has been exhausted or if there is no recourse to appeal.

3. b)

45. The legal remedy system, and, by implication, legal protection, continues to be incomplete in the area of the law of regulatory offences (misdemeanours). Preparations for the modification of Act I of 1968 on regulatory offences began as early as 1993. Expanding legal protection is just one of the reasons; another is that today the law includes a great variety of infractions under the category of regulatory offences. These include both criminal cases and cases relating to civil rights. The intention of the Government is to ensure that, in these cases, there is scope for judicial legal remedy against a regulatory offence decision handed down by an administrative agency, an arrangement not, as yet, available under the current regulations. At present, the transmutation of a fine imposed for a regulatory offence into a prison term in case of non-payment (Regulatory Offences Act, 71/A. 72) is the only type of decision where a petition for a judicial review may be submitted to test the legality of the decision. Within the regulatory offence procedure, there is room for administrative legal remedy in the form of a complaint or appeal. (Regulatory Offences Act, 51, 68.)

46. In Act III of 1952 on the Code of Civil Procedure and in related legislation, it was Act LXVIII of 1992 on the establishment of the review procedure that introduced the institution of the review in the field of civil procedure. A petition for a review may be submitted to the Supreme Court against a final judgement. A petition of this kind may be lodged as a special legal remedy by anyone (i.e., the party, the prosecutor, and other persons authorised by the law), but it can be submitted only through a legal representative. The Supreme Court adjudicates the petitions at a hearing or out of sessions, depending on the kind of claim submitted by the parties to the dispute. The Supreme Court has the power to 1) uphold the contested decision (if no breach of the law has occurred that may affect a determination of the matter on its merits); 2) hand down a new decision to replace one that is in breach of the law (if the facts necessary for making this decision can be established); or 3) declare invalid, entirely or in part, the decision that is in breach of the law, and, at the same time, turn the case to the court of first or second instance. Moreover, attention should be drawn to the fact that Act LXVIII of 1992 also touches upon questions of fair hearing, i.e. questions that figure in Article 14 of the Covenant. Firstly, the law modifies paragraph 3(2) of the Code of Civil Procedure. The new provision mandates courts to bring lawsuits to a conclusion within a reasonable length of time ("The court shall, ex officio, see to it that lawsuits are thoroughly discussed and are brought to a conclusion within a reasonable period of time.") Secondly, the Act cites impartial and independent judicature as one of the pivotal elements of fair hearing. It amends paragraph 21(3) of the Code of Civil Procedure, stipulating that "no judge who has been involved in making any of the decisions affected by the petition for review shall proceed

in the determination of the petition for review." This prohibition is in accordance with the case-law of international forums relevant to fundamental rights.

47. Act LXIX of 1992 introduces the institution of the review, as a special legal remedy, into Act I of 1973 on criminal procedure. A petition for review may be lodged with the Supreme Court against a legally binding and conclusive decision of a court reviewed in second instance or against a part of a legally binding and conclusive decision of a second-instance court in the following cases:

1. if the acquittal or conviction of the defendant or his/her committal for compulsory medical treatment was due to a violation of some penal law provisions;

2. if an unlawful sentence was imposed or if unlawful measures were taken during the procedure. A motion of review may be submitted both in favour and against the defendant. Every defendant, in every case, is entitled to submit a motion of review in his/her own favour. In addition, the persons entitled to submit a motion include the prosecutor, the counsel for the defence, the legal representative, the plaintiff (in the case of acquittal or the discontinuance of the proceedings), and the relatives, siblings, or spouse of the defendant after his/her death.

48. Act XCIII of 1994 on the judicial review of confinement widened the legal remedy to be obtained through the courts, permitting the judicial review of the imprisonment of persons doing their national military service. This statute settles, in conformity with the requirements of the rule of law, one of the highly critical questions of the Hungarian system of legal remedies -- one that is admittedly problematic when set against the international instruments dealing with human rights. Under the provisions of the statute, persons serving in the armed forces can be confined for a period of up to 21 days. However, the detainee may contest before a court the order imposing the confinement, provided he/she has exhausted his/her right of complaint. The petition contesting the order imposing the confinement must be submitted, within three days from the communication of the order, to the commanding officer who has imposed the punishment. The court, as judge ordinary, reviews the petition within three days based on a hearing of the detainee and the documents submitted. This opportunity for legal remedy may be linked, again, with a provision of Article 9 (3) of the Covenant, which requires that all persons deprived of their liberty be brought promptly before a judge.

49. Under paragraph 199 (1) of the Labour Code, an industrial dispute involves the employer facing the employee, the trade union or the works council. In these cases, it is a measure (omission) of the employer regarded as unlawful or a claim arising from the employment that forms the basis of the industrial legal dispute. At the same time, the general rule of the statute requires the employer as well to settle claims within the framework of an industrial legal dispute.

50. Under the statute, a court shall proceed in the industrial legal dispute. However, the judicial procedure must compulsorily be preceded by an attempt at conciliation between the parties. The statute requires a time limit of 15 days for the initiation of the conciliation process and a time limit of 8 days for the completion of the conciliation.

51. Under paragraph 201 of the Labour Code, if the conciliation is unsuccessful within eight days of the initiation of conciliation, either party may recourse to a court within the specified period. Otherwise -- in the cases enumerated in paragraph 202 of the Labour Code -- the

statute prescribes a time limit of 15 days for the enforcement of the claims. This category includes exclusively those suits where the legal remedy is sought by the employee; however, in these matters legal uncertainty cannot be maintained over a longer period.

52. Pursuant to the Covenant, it might fairly be expected that violators of human rights be brought to justice. The Human Rights Committee, in the course of its activity carried out under Article 41 of the Covenant, consistently examines -- especially in those countries where democratic governments have taken over after earlier periods of dictatorship -- the steps to bring the perpetrators of violations of human rights to justice. In this regard, two areas, in particular, need to be given special attention.

Measures relating to individuals who, in the pre-1990 period, acted as agents of the state security agencies

53. In March 1994, Parliament passed Act XXIII of 1994 on the screening of individuals filling certain important posts. Apart from all else, the four years between the democratic changes of 1990 and the eventual adoption of the Act testify to the enormous difficulties posed by the legislation, both in the political and in the legal sense, since, during those four years, the issue almost continuously engaged the attention of Parliament. Subsequent to its enactment, the Act was also examined by the Constitutional Court, which, while it annulled some of its provisions, ruled that the legislation was for the most part constitutional.

54. The Act defines the categories of individuals who must undergo the screening. This category is fairly broad, embracing almost the whole body of officials active in the legislative, executive, and judiciary branches of government. For the purpose of the screening, the statute provides for the establishment of three-member committees, to be comprised of judges with an unimpeachable record. They must be the first to go through the screening process, a task pertaining to Parliament's National Security Committee, which also elects the members of the committee. During their work in the committee, the judges cannot administer any other justice, until their membership in the committee is terminated, their service relations as judges shall be in abeyance. These committees shall examine, in the order determined by the statute, whether the individuals falling under the statute have served as agents in the past. They may obtain the relevant information from the Ministry of the Interior, the national security agencies, and any other agencies where the relevant lists are, in accordance with an ordinance dating from 1990, kept in closed files; however, the committees may also enlist any other lawful means of collecting evidence. The committee shall notify in writing the person who is the subject of the screening of the commencement of the screening; the person concerned may appear before the committee but cannot be compelled to do so. If the person concerned relinquishes his/her post during the screening, the procedure shall be discontinued.

55. If the committee concludes that the person under examination has, in fact, acted as a state security agent, it shall call upon him/her to resign, informing him/her that, should he she fail to comply, it will publish its findings. This decision of the committee may be challenged in the courts, and such a lawsuit shall have a delaying force on the publication. The court shall examine the action in camera. It may reverse the decision or dismiss the action, in which case the committee shall publish the decision in the official journal, while also transmitting it to the Hungarian News Agency MTI for the purposes of publication.

56. There are six Acts providing for the financial compensation of the victims of human rights violations: Act XXV of 1991 on the partial compensation for losses unjustly caused to the property of citizens by the state (see text in Annex 12); Act XXIV of 1992 on the partial compensation for the losses unjustly caused to the property of citizens by the state through the application of statutory provisions enacted in the period from May 1, 1939 to June 8, 1949 (see the text of the statute in Annex 13); Act XXXII of 1992 on the compensation of persons unlawfully deprived of their lives and liberty for political reasons (see the text of the statute in Annex 14); Act LII of 1992 on national care (see the text of the statute in Annex 15); Act X of 1997 on the implementation of the provisions of clause 2 of Article 27 of Act XVIII of 1947 of the Paris Peace Treaty; and Act XXXIII of 1997 on particular questions relating to the conclusion of financial compensation procedures.

57. The Constitutional Court, in its decision 1/1995 (III.8), ruled that the definition of the personal scope of Act XXXII of 1992 was arbitrary and the relevant provisions were therefore null and void.

- Under Act X of 1997, restoration shall be made, in accordance with clause 2 of Article 27 of Act XVIII of 1947, to the Hungarian-based organisations of persons affected by racial or religious discriminatory laws or other, fascist ordinances of such property confiscated from individuals as has not been claimed by the heirs, and these organisations shall apply this property to the support of the communities concerned and their surviving members.

- Act LII of 1992 provided for the national care of persons who have sustained a permanent disability or grave damage to their health as a result of illegalities committed under the violation of fundamental human rights or, where these individuals lost their lives, for similar national care of their relatives.

- Act XXXIII of 1997 contained some important provisions aimed at a speedy conclusion of financial compensation procedures.

58. It was with the aim of eliminating the deficiencies in the field of the self-checking mechanisms of state power, of supplementing the guarantees serving to protect constitutional rights, and of strengthening Parliament's supervisory function over the administration that the institution of Parliamentary Commissioner (Ombudsman) was established, attached to independent of the Government and the judiciary -- an institution that has already proved useful in other civic democracies. Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (see text in Annex 16) serves the implementation of the constitutional provisions establishing the aforementioned legal institution.

59. Under the above statute, the Parliamentary Commissioner for Civil Rights was elected June 30, 1995. It has been possible to lodge complaints with the Office of the Parliamentary Commissioner for Civil Rights as of September 15, 1995. Under the statute, the Parliamentary Commissioner is responsible for conducting or ordering investigations into reported civil rights grievances as well as taking general or individual measures with a view to remedying them. The Parliamentary Commissioner is elected by Parliament on the proposal of the President of the Republic. The Parliamentary Commissioner, while receiving his/her mandate from Parliament, is, in the discharge of his/her functions, independent of Parliament, proceeding exclusively on the basis of the Constitution and the laws. The independence of the ombudsman is bolstered by a provision under which he/she is elected not for the duration of a

parliamentary term but for a six-year period. In addition, there are some stringent conflict-of-interest rules designed to ensure the independence of the Parliamentary Commissioner.

60. In order to ensure that the Parliamentary Commissioner is able to carry out his/her functions without any interference, the law provides for virtually the same kind of immunity as that enjoyed by Members of Parliament. The Parliamentary Commissioner reports annually to Parliament on the protection of constitutional rights in official procedures, on the measures taken by him/her, and on the reception and results of these measures (see report in Annex 17).

Article 3

61. The Constitution of the Republic of Hungary recognises the inviolable and inalienable fundamental rights of the human being, declaring it to be a prime duty of the state to respect and protect these rights.

62. Chapter XII of the Constitution enshrines the fundamental rights and duties pertaining to citizens of the Republic of Hungary and persons staying in its territory. Paragraph 70 spells out in detail all the norms that ensure the elimination of any kind of discrimination against persons. In accordance with the above, paragraph 70/A(1) of the Constitution confirms that the state "ensures to all individuals within its territory human and civil rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In subparagraph (3), it affirms its commitment "to help the achievement of equality before the law also via measures aimed at eliminating inequalities of opportunity."

63. In addition to prohibiting discrimination, the Constitution specifically affirms the principle of equality between the sexes, pursuant to which the Republic of Hungary guarantees the equality of men and women in respect of all civil and political rights, as well as economic, social, and cultural rights (Constitution Article 66 (1)).

64. Hungarian statutes currently in force provide additional legal guarantees for the equality of women and men by confirming the equality of citizens.

65. Act IV of 1952 on marriage, the family, and guardianship, as subsequently modified (hereinafter: Family Law Act), and Act XXXI of 1997 on the protection of the child and the administration of guardianship affairs (hereinafter: Child Protection Act) focus on equality between the sexes within the family, in regard to questions concerning the family. The Family Law Act stipulates that either spouse who has a legal interest in securing such a verdict may bring an action for the establishment of the validity and existence or non-existence of the marriage. (Family Law Act, para. 6) Consistent with this is the provision of the statute pursuant to which the court may dissolve the marriage upon the request of either spouse or upon the joint request of both spouses, citing irreconcilable differences. The Family Law Act also provides that the spouses shall have equal rights and obligations and shall jointly decide on matters relating to their marriage. (Family Law Act, para. 23(1))

66. Having regard to the above, the Supreme Court, in conformity with its jurisdiction defined in the Constitution, has -- because of the comparatively high divorce rate -- formulated directives with a view to heightening parents' sense of responsibility (Directive No. 24 of the Supreme Court regarding child placement, 1996). According to these directives, it is a duty of the

spouses arising from the Constitution and the Family Law Act to protect the family and the marriage, and to ensure the conditions necessary for the healthy development of the child living in the family. Both parents have a right, as well as a duty, to help achieve these goals.

67. The parents, unless otherwise agreed or unless the court rules to the contrary, shall jointly exercise parental supervision, irrespective of whether their matrimonial cohabitation is maintained. Hence it follows that neither marriage partner shall be accorded any privilege. In pursuance of equality, they shall be equally responsible for providing for the child, for performing the tasks related to child-rearing and family life. Maintaining the family as well as creating and preserving the atmosphere best suited for the rearing of the child are the responsibility of both spouses. The principle of equality within the family is the guiding intention, too, behind Act XXV of 1990, which states that either spouse living in a common household with the child may apply for child-care benefit. Recent years have seen a trend, especially among young professional couples or spouses, whereby, based on a joint decision, it is the male partner, rather than the woman, who stays at home to look after the child and who claims the child-care benefit. For this period, men are entitled to the same rights and provisions as women would be in an identical situation.

68. The elimination of discrimination in the world of labour is laid down in paragraph 5(1) of Act XXII of 1992 on the Labour Code. In connection with their employment, no discrimination is allowed between employees on the grounds of their sex, age, nationality, race, origin, religion, political belief, membership in an employees' interest-representation organisation or their activity connected therewith, or any other circumstances unrelated to the employment. However, differentiation based on the character or nature of the work does not fall within the definition of discrimination.

69. The right to equal pay and equal work are fundamental rights enshrined in the Constitution (Article 70/D(2)), a provision allowing women freedom to choose their occupation as well as safeguarding their right to equal pay for work of equal value.

70. The employment of women gave them the title to receive pension in their own right. Previously, it was the widow's pension system that allowed women otherwise not entitled to it to receive a pension following the death of their husband. The aim was to prevent their being left completely deprived of all support. Men, however, were not entitled to this benefit. This inequity was finally ended by Act LXXXI of 1997, which stipulates in paragraph 45 that a widow's pension may be received, provided the prescribed conditions exist, by the spouse, divorced spouse or married partner under common law (hereinafter spouse) whose spouse has otherwise qualified for old-age or disability pension.

Article 4

71. The current constitutional provisions are as follows:

"19. § (1) The supreme body of state power and people's representation of the Republic of Hungary is Parliament.
(2) Parliament, exercising its rights deriving from popular sovereignty, shall ensure the constitutional order of society and determine the organisation, direction, and conditions of governance.
(3) In this sphere of authority, Parliament

(g) shall decide on the declaration of a state of war and the question of concluding peace;
(h) in the event of a state of war or the immediate danger of an armed attack by a foreign power (a danger of war), it shall declare a state of emergency, and form a National Defence Council;
(i) in the event of armed actions aimed at overturning the constitutional order or acquiring a monopoly of power; of serious acts of violence, committed by force of arms or under arms, endangering, on a massive scale, the security of life of citizens and their security of property; and of an Act of God or industrial disaster (hereinafter collectively referred to as: calamity) it shall declare a state of national alert;

19/A. § (1) If Parliament is incapacitated from making these decisions, the power to declare a state of war, to declare a state of emergency and to establish a National defence Council, and to declare a state of national alert shall lie with the President of the Republic.
(2) Parliament is incapacitated from making these decisions if it is not sitting, and if the brevity of time and the events that have given rise to the state of war, the state of emergency or the state of national alert pose insurmountable obstacles to its convocation.
(3)The fact of the incapacitation, and whether there exists a just cause for declaring a state of war, a state of emergency or a state of national alert, shall be established jointly by the Speaker of Parliament, the Chairman of the Constitutional Court, and the Prime Minister.
(4) Parliament shall, at its first session after the incapacitation has ceased to exist, review the justification for the declaration of the state of war, state of emergency or state of national alert, and shall decide on the legality of the measures taken. For this decision, the votes of two-thirds of the members of Parliament are required.
19/B.§ (1) During a state of emergency, the power to decide on the deployment, abroad or at home, of the armed forces and on the introduction of emergency measures defined in a special statute shall lie with the National Defence Council.
(2) The National Defence Council shall be presided over by the President of the Republic, and it shall include the Speaker of Parliament, the heads of the parliamentary parties represented in Parliament, the Prime Minister, the ministers, the Commander of the Hungarian Armed Forces, and the Chairman of the Joint Chiefs of Staff.
(3) The National Defence Council shall exercise:
a) the rights vested in it by Parliament,
b) the rights of the President of the Republic,
c) the rights of the Government.
(4) The National Defence Council may make decrees, in which it may suspend the application of certain statutes or may depart from statutory provisions; moreover, it may take other extraordinary measures, but it may not suspend the application of the Constitution.
(5) The decree of the National Defence Council shall, with the ending of the state of emergency, cease to have effect, unless Parliament extends the effect of the decree.
(6) The operation of the Constitutional Court may not be restricted even during a state of emergency.

19/C. § (1) When declaring a state of national alert, in the event of Parliament being incapacitated, the decision on the deployment of the armed forces shall lie with the President of the Republic.
(2) During the state of national alert, the emergency measures determined in a special statute shall be introduced, by decree, by the President of the Republic.
(3) The President of the Republic shall promptly inform the Speaker of Parliament of the emergency measures which have been introduced. During a state of national alert, Parliament

- or, in the event of its incapacitation, Parliament's National Defence Committee - shall be in continuous session. Parliament or Parliament's National Defence Committee may suspend the enforcement of the emergency measures introduced by the President of the Republic.
(4) The emergency measures introduced by decree shall remain in force for thirty days, unless Parliament - or, in the event of its incapacitation, Parliament's National Defence Committee - extends their effect.
(5) For the rest, the state of national alert shall be subject to the rules governing the state of emergency.

19/D § For the adoption of the statute containing the detailed rules to be applied during the state of emergency and the state of national alert, the votes of two-thirds of the attending members of Parliament are required.

19/E. § (1) In the event of an unexpected invasion of the territory of Hungary by external armed groups, the Government, pending the decision regarding the declaration of a state of national alert or a state of emergency, shall, in accordance with the defence plan approved by the President of the Republic, take prompt action, by forces proportionate to the attack and prepared therefor, to repel the attack and to protect the territory of the country by the air defence and aerial fast-response forces of the Hungarian Armed Forces, and to defend the constitutional order, the security of life and security of property of citizens, public order and public safety.
(2) The Government shall, with a view to taking further measures, promptly inform Parliament and the President of the Republic of the measure it has taken on the basis of subparagraph (1).
(3) For the enactment of the statute on the rules to be applied to the immediate measures of the Government, the votes of two-thirds of the attending members of Parliament are required."

72. The implementation of these constitutional provisions is governed by Act CX of 1993 on national defence, Section IX of which enumerates the measures that may be taken during a state of emergency and a state of national alert, while also spelling out in detail the rights that may be restricted during these periods and the extent to which they may be restricted. While it is evident from the enumeration of possible restrictions that the rights contained in Article 4, (2) of the Covenant may not be restricted even during a state of war, a state of emergency or state of national alert, a consensus emerged, in the drafting stage of the new Constitution, that the rights not subject to restriction had to be enumerated by the Constitution itself.

Article 6

73. Article 6, (2) of the Covenant sets out the conditions for the application of the death penalty, while the Second Optional Protocol of the Covenant provides for the abolition of the death penalty. In Hungary, this Protocol was promulgated by Act II of 1995.

74. In its 23/1990. (X.31.) AB ruling, the Constitutional Court declared capital punishment to be unconstitutional; therefore it annulled, with effect from October 31, 1990, the penal-law, criminal-procedure, and enforcement-of-punishment provisions on capital punishment.

75. In its decision, the Constitutional Court referred to paragraph 8(2) of the Constitution, pursuant to which "in the Republic of Hungary, the rules relating to fundamental rights and

duties are determined by law, but the law shall not limit the substantial contents of a fundamental right."

76. The Constitutional Court ruled that the provisions on capital punishment of the Criminal Code and all related legislation runs counter to the prohibition of limiting the substantial contents of the right to life and human dignity.

77. It is worth pointing out that the Constitutional Court, in its decision, also referred to the Covenant. The exact wording of V/4. of the decision is as follows:
"Article 6. (1) of the International Covenant on Civil and Political Rights -- to which Hungary is a party and which it promulgated by Law-Decree No. 8 of 1976 -- states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Subparagraph (6) of the same Article states that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant." (It should be noted that, at this particular point in time, Hungary was not yet a party to the Second Optional Protocol.) The direct reference, in the decision by the Constitutional Court, to the Covenant supports what was stated above in connection with Article 2, regarding the status of the Covenant in Hungarian law.

78. Hence it might fairly be stated that the abolition of capital punishment is the result of an internal constitutional development, but Hungary also reinforced the elimination of this form of punishment from the legal system by the assumption of international treaty obligations.

79. At the same time, the abolition of capital punishment did, undeniably, meet with resistance from a considerable section of the population, with some voicing misgivings that the move could lead to a rise in criminality, primarily of the type previously subject to capital punishment. It was partly in response to these criticisms that, by Act XVII of 1993 and Act IX of 1994 -- the latter having entered into force on May 15, 1994 -- amendments were made to the provisions relating to life imprisonment and, more particularly, to release on parole.

80. These amendments tightened up the earlier provisions by permitting the court, when imposing a life sentence, to set 25 years as the earliest date for conditional release. Previously, this period was 20 years. Excepting a decision of clemency, a convicted person who has repeatedly been sentenced to life imprisonment shall be excluded from the benefit of conditional release.

81. If a convicted person is, while serving a life sentence, sentenced to another term of imprisonment for a crime committed prior to or after his/her conviction, the court may defer the earliest date of conditional release by a period of between 15 and 25 years.

82. If a person sentenced to life imprisonment is, while on conditional release, sentenced to a non-suspended prison term for a crime committed prior to the conditional release, the court annuls the conditional release. In such cases, he/she shall be barred from release on parole for double the duration of the fixed-term prison sentence, but, in any case, for a minimum period of 5 years.

83. A component of the broader concept of the right to life is the lawful use of firearms, as one of the coercive measures of the police. Police officers shall be authorised, with safeguards set out in law, to use these weapons only in defence of the life of other persons, in the fight against armed criminals, and in the defence of the police service. The Police Act (Act XXXIV of

1994, para. 54-57) defines in detail the conditions of the use of firearms, also having taken into consideration the resolution adopted in this matter by the United Nations' Eighth Congress on Crime Prevention. This strongest coercive measure may be used only in self-defence, in order to prevent the commission of a serious crime endangering the lives of others, to capture an individual causing such danger, and to prevent his/her escape. The Police Act sets out in detail these circumstances and prohibits the use of weapons against crowds or groups (permitting it only with specified exceptions). Firearms may only be used against single individuals. Finally, the outcome must be such as cannot be achieved by any other means. Under the Police Act, the use of weapons shall be preceded by preliminary measures (e.g. the application of other coercive measures, warning, warning shot).

84. The Police Service Regulations (3/1995. (III. 1.) BM r. (Interior Minister's order) para. 61-69) defines the range of orders under which shots may be fired, and the circumstances under which a shot fired may be regarded as lawful, actual use of weapons. With the exception of physical constraint and handcuffs, coercive means, including firearms, may not be used against a woman who is manifestly pregnant, or against a child (except in cases of justified self-defence). Under the Service Regulations, effort must be made, when using weapons, to avoid the extinction of human life, directing the shot, as far as possible, onto the legs or the hands. If a person is injured during the use of weapons, he/she shall promptly be provided with first aid and medical attention, and his/her dependant shall be informed. It is an important rule that any instance of the use of firearms shall, within three days after its occurrence, be investigated by the chief of the police authority to establish its lawfulness and compliance with professional standards. If a well-founded suspicion of a criminal offence has been established, the commanding police officer brings charges at the Public Prosecutor's Investigating Office; while, in the event of a disciplinary offence, he/she takes action for the conduct of disciplinary proceedings.

Article 7

85. Since the submission of the previous report, the Republic of Hungary ratified the European Convention on the Prevention of Torture, promulgating it by Act III of 1995. The Committee set up for the implementation of the Convention (CPT) has already made its first visits to selected detention centres in Hungary.

86. The delegation visited the following detention facilities: Budapest remand prison, Police Central holding facility, Pest County police holding facility, 3rd District Police Station, 5th District Police Station, 6th and 7th District Police Station, 8th District Police Station, Community Hostel of the Kerepestaresa Police Regiment, and Tökol Prison. The Committee encountered no signs or complaints of torture, but generally found the complaints about ill-treatment and physical assault by the police well-established. The CPT found the conditions of detention to be unsatisfactory in general because of overcrowding, poor outdoor activity facilities, and insufficient daily activity regimes, as well as the underpaid and sometimes inadequately trained prison staff.

87. The CPT was impressed by the good relationship between the prison staff and detainees, the standard of prison management, as well as the high number of prisoners participating in basic education and the different levels of treatment applied to different groups of adolescent detainees in the Tökol prison. The lack of appropriate daily activity was also found to be a general problem in the prisons and the CPT expressed its concern about the prison policy

towards the problem of suicide, as well as the practice of compulsory HIV tests and the segregation of HIV positive convicts, which was found to be out of line with the standards set by the relevant Council of Europe Recommendations.

88. The CPT made several recommendations, most of them concerning police procedures and rules and detention under remand, since these were the fields where most of the irregularities and problems were found. (See the Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in Annex No. 22)

89. In its comments, the Government admitted most of the problems and made several measures to remedy the situation. These measures included closing down the Kerepestaresa detention centre, as well as some police stations, and ordering the training of police staff in human rights. (See the Follow-Up Report of the Ministry of Justice of the Republic of Hungary on the implementation of the recommendations contained in the report of the CPT on its visit to Hungary in Annex No. 23)

90. However, due to lack of funds, the detention on remand to be carried out in prisons instead of police stations cannot be achieved in the near future. The Government intends to remedy the situation by building a 600-place prison in Budapest, establishing an institution for the training of prison staff, and increasing the number of the staff.

91. The Deputy Chief Public Prosecutor has issued a circular in accordance with the recommendations of the CPT, calling on public prosecutors to consistently implement the provisions prohibiting ill-treatment and, in case of discovering any irregularities, to take immediate steps to address them. (See in Annex No. 25.)

92. Act XXXII of 1993 (see text in Annex 6) amended, and brought into line with the provisions of the Covenant, paragraph 21 of Law-Decree 11 of 1979 on the enforcement of punishments and measures. Replacing the earlier stipulation -- "The detainee shall be treated with humanity; he shall not be hurt in his human dignity" – is the new provision: "(1) The human dignity of the detainee shall be respected, he shall not be subjected to cruel, inhuman or degrading treatment; no medical experiment or scientific study or experiment shall be carried out on him without his consent."

93. The statute regulates in detail the rights of detainees. Thus, under paragraph 36(3) (g), a detainee is entitled "to submit, in the penitentiary facility, information of public concern, complaints, petitions, and legal statements to authorities independent of the penal system."

94. The complaint shall be judged by the penitentiary institution; if the detainee does not agree with this arrangement, he/she may apply to the National Commander of the Prison Administration.

95. The legality of the detention is supervised by the Public Prosecutor's Office. Inmates may apply directly to the prosecutor supervising the enforcement of punishment.

96. Inasmuch as the prohibition of torture is a fundamental right enshrined in the Constitution, an infringement thereof may, pursuant to 70/K. § of the Constitution, justify a recourse to a court of law.

97. The statute permits inmates to correspond with the authorities and international organisations without any interference (paragraph 36 (5)d).

98. According to the report of the Commission for the Prevention of Torture of the Council of Europe, no cases prohibited by Article 7 occurred in Hungary during the reporting period.

99. In respect of Article 7, see also the Second Supplementary Report on the implementation of the Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment, submitted by the Hungarian Government to the Office of the High Commissioner for Human Rights on April 21, 1998.

Article 8

100. 1. Under Article 70/B (1) of the Constitution, everyone has the right to work and the right to freely choose his/her work and occupation.

101. The active instruments of the policy on employment operated in the interest of achieving the fullest possible employment and avoiding unemployment are contained in Act IV of 1991 on promoting employment and providing for the unemployed. These instruments are: a) retraining assistance; b) helping unemployed persons become entrepreneurs; c) grants serving the expansion of employment; d) supporting job creation; e) supporting part-time employment.

102. Article 70/B (1) of the Constitution, quoted above, also embodies the prohibition of forced labour. According to the penal-law definition of coercion, anyone who compels another person, by force or by threats, to do, not to do, or endure something, causing thereby a substantial impairment of interests, shall, unless another criminal offence has been carried out, be guilty of a criminal act and shall be subject to imprisonment of up to three years. According to this definition, all forms of conduct which, by force or by threats, deprive the aggrieved party of his/her liberty of action are criminal acts.)

Article 9

The restriction of liberty during criminal proceedings

103. The previous report already outlined in part Act XXVI of 1989, which assigned the power to order preliminary arrest and committal for temporary compulsory medical treatment to the courts. However, it seems necessary to provide some additional details.

104. Under the Act, it is incumbent on the prosecutor to submit a motion to the court for the ordering, extension or maintenance of the above-mentioned coercive measures. The prosecutor shall bring the suspect to justice and inform the defence counsel accordingly. If a motion has been submitted for an order of preliminary arrest or committal for temporary compulsory medical treatment, the court shall hold a hearing, at which the prosecutor shall present in writing or set out verbally the evidence substantiating the motion. The suspect and the counsel for the defence may also speak at the hearing. If an additional motion is submitted, the court shall hold a hearing if a new circumstance warranting it arises. In regard to the

determination of the relevant cases, it is important that the court is not tied to the prosecutor's motions.

105. Both the defendant and the counsel for the defence may request the court to terminate the coercive measures, but, pending the submission of the bill of indictment, the prosecutor, too, shall have the power to order their termination.

106. The practice of proceedings relating to coercive measures is, in the experience of recent years, in compliance with the law and, though in many instances the verdict does concur with the prosecutor's motion, is not a mere formality.

Statistical data:

	prosecutor's motion for preliminary arrest	the court ordered it	did not order it
1990	8.556	8.133 (95%)	378 (5%)
1991	10.883	10.337 (95.2%)	529 (4.8%)
1992	10.798	10.273 (95.1%)	547 (4.9%)
1993	9.071	8.626 (95%)	436 (5%)
1994	8.833	8.278 (93.7%)	555 (6.3%)

107. Having regard to the position of the Human Rights Committee (which is, essentially, in alignment with that of the European Court of Human Rights) on sentencing practice, Act XCII of 1994 on the amendment of the Criminal Procedure Act, which entered into force on February 15, 1995, fixed the maximum duration of custody on remand at 72 hours, replacing the previous maximum period of 5 days. This provision is in compliance with the requirement that "anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorised by law to exercise judicial power".

108. Under Act XXXVI of 1989, the prosecutor shall inform the counsel for the defence of the hearing to determine whether an order should be issued for preliminary arrest or committal for temporary medical treatment; if, however, the counsel for the defence fails to appear, this shall not be an obstacle to the hearing being held.

109. However, in the case of juvenile offenders – according to Act XLI of 1995 on the amendment of penal statutes -- the hearing may not be held in the absence of the counsel for the defence. Moreover, the legal representative and the guardian of the juvenile shall also be informed of the hearing, and these persons shall have the right to speak.

110. The preliminary arrest ordered prior to the submission of the bill of indictment may continue pending the decision of the first-instance court during the preparation of the hearing, but its duration may not exceed one month. Preliminary arrest may be extended by the local (first-instance) court on a single occasion, by a maximum period of two months. After three months have elapsed, only the county (second-instance) court has the power to extend the preliminary arrest, on two occasions, in such way that the extension shall not exceed one year counting from the ordering of the arrest. Thereafter, the Supreme Court alone is competent to extend the preliminary arrest.

111. Preliminary arrest ordered or sustained by the court of first instance after the submission of the bill of indictment may last pending a determining judgement by the court of first instance, while preliminary arrest ordered or sustained thereafter may last pending a non-appealable conclusion of the proceedings; however, its duration shall not exceed that of the prison term imposed by the court of first instance.

112. If the duration of the preliminary arrest ordered or sustained after the submission of the bill of indictment exceeds six months and the first-instance court has not yet made a decision on the merits of the case, this court must, ex officio, review the grounds existing for the preliminary arrest. And if the duration exceeds one year, the Supreme Court must review the grounds existing for the detention.

113. The defendant and the counsel for the defence may, at any time, request the termination of the detention; if, however, their repeated request does not contain any new circumstances, the court may dismiss the motion.

114. Paragraph 96(1) of the Criminal Procedure Act obliges the authorities to seek to minimise the duration of preliminary arrest. If the defendant is under preliminary arrest, there is scope for the proceedings to be accorded a fast-track treatment.

Compulsory medical treatment in a psychiatric institution, as a form of deprivation of liberty

115. Act LXXXVII of 1994 on the amendment of Act II of 1972 on health care assigned committal for medical treatment in a psychiatric institution to the jurisdiction of the courts, prescribing obligatory reviews of the treatment at shorter intervals than stipulated under the prevailing regulations, i.e., 30 or 60 days.

116. Committal for compulsory medical treatment in a psychiatric institution is an option available to the court when dealing with a patient who, as a result of his/her pathological state of mind, is in a state which severely endangers his/her own life or health, or the life or health of others, or his/her surroundings.

117. Similarly, it is necessary to request the court to order compulsory medical treatment in a psychiatric institution if the patient has been directly removed to a psychiatric in-patient institution because of urgent need (e.g. an acute disturbance of consciousness).

118. When a decision is required on whether to commit a person for medical treatment in a psychiatric institution, the court shall make its verdict in a fast-track procedure, on the basis of a hearing set within 3 days -- and, in case of urgency, within 8 days. Moreover, the court shall obtain an opinion from a psychiatric expert not involved in the medical treatment of the patient. The order of committal for medical treatment may be appealed against by the person concerned or by his/her representative.

119. Under the earlier regulations, in the event of disciplinary punishment involving a restriction of liberty applied against soldiers, the decision of the superior exercising the disciplinary powers was final, leaving the individual concerned with no recourse to the courts. However, a comparative review of our legal system and the Covenant (and the European Convention on

Human Rights) made it apparent that confinement is, as regards the application of Article 9 of the Covenant, a restriction of liberty.

120. Under Act XCIII of 1994 on the judicial review procedure of confinement, adopted with the above principle in mind, the court shall -- on the basis of a petition by the recipient of the punishment, where this petition shall have a delaying force -- determine the matter within 3 days, at a hearing and on its merits. In fact, the court may also substantively alter the order imposing the punishment, but it may not aggravate it. This ensures that, even for soldiers, liberty is restricted only on the basis of a judicial decision.

121. The earlier regulation of measures involving a restriction of liberty applicable against foreigners who infringe the Immigration Police rules was not consistent with Article 9 of the Covenant, inasmuch as the person concerned could not request the court to review the legality of his/her arrest and detention.

122. Under Act LXXXVI of 1993 on the entry, stay in Hungary, and immigration of foreigners:

"36. § (1) In cases where an expulsion order has been issued, as a supplementary punishment imposed by a final judicial decision, and in cases where the expulsion has been ordered under a decision by the Immigration Police Authority (31. § (1)), the authority responsible for the order may - in the former case, at the initiative of the court, and, in the latter, in the interest of the enforcement of the expulsion order - detain, under the Immigration Act, the foreigner who
a) has gone into hiding from the authority or otherwise hinders the enforcement of the expulsion; or
b) refuses to depart or may, for some other strong reason, be presumed to be about to delay or frustrate the enforcement of the expulsion; or
c) committed a regulatory offence or a criminal offence during the validity of the expulsion and prior to the departure; or
d) leaves, without permission or in the absence of the prescribed conditions, the place designated for compulsory residence.
(2) Detention under the Immigration Act shall be ordered by a formal decision and executed simultaneously with the communication thereof.
(3) Detention under the Immigration Act may be ordered for a maximum period of five days, which the local court having jurisdiction in the place of detention may extend until the departure of the foreigner.
(4) If the duration of the detention under the Immigration Act exceeds thirty days, the court shall, on a monthly basis, review the necessity of maintaining the detention.
(5) The power to order a person to be detained for a period in excess of six months lies exclusively with the county (metropolitan) court which has jurisdiction in the place of detention.
(6) Detention under the Immigration Police Act may continue until the conditions have been created for the enforcement of the expulsion. The detention shall be promptly terminated if the cause for which it was imposed has ceased to exist.

43. § (1) The National Police Commissioner's Office, the Border Guards, the Directorate or Branch Office of the Border guards may, by a formal decision, order the foreigner to reside in a designated place, as a measure restricting personal freedom but not falling under the concept of detention under the Immigration Act, if
a) he is unable to prove his identity, until it has been established; or if

b) he is unable to prove the legality of his stay in Hungary, until it has been proved or until an official residence permit has been issued; or if

c) such a measure is necessary for ensuring the enforcement of the expulsion, until the conditions for the departure have been created, assuming that the conditions for the placing in detention, as defined in this statute, do not exist; or if

d) an order has been issued for sending him back (25. § (2)), pending his departure; or if

e) there are legitimate grounds for excluding or expelling him, but, under the prohibition set forth in 32. § (1), he may not be sent back or expelled.

(2) The enacting part of the decision must state the place of compulsory residence and the conditions of leaving the place of residence.

(3) The compulsory state of residence may also be designated at a communal residential facility if the foreigner is unable to support himself/herself and has no adequate accommodations, pecuniary means or income, inviter responsible for supporting him/her or relative who could be obliged to support him.

(4) When ordering an alien to reside at the communal residential facility, provision must be made for the temporary measures specified under 38. § (2) to be taken.

(5) The decision ordering residence in a designated place cannot be appealed against. The foreigner may request a judicial review of the first-instance verdict. The provisions to be applied to the procedure are the same as those relating to the judicial review of the legality of detention under the Immigration Act."

123. Under Act I of 1968 on regulatory offences (misdemeanours), cases falling under this category are handled not by judicial, but by administrative authorities. In a regulatory offence case, there is no possibility for handing down a decision restricting personal liberty. However, if the offender fails to pay the fine imposed, the authority may transmute the fine into imprisonment. In the interest of bringing the legislation into line with the Covenant -- and the European Convention on Human Rights -- Act XXII of 1990, which entered into force on March 15, 1990, introduced the judicial review of the decision transmuting the fine into imprisonment.

124. The Hungarian equivalent of compensation for unlawful arrest or detention, as set forth in Article 9, (5) of the Covenant, is regulated in Article 55(3) of the Constitution.

125. According to ruling 66/1991. (XII. 21.) AB of the Constitutional Court, deprivation of personal liberty in the enforcement of the provisions of the Constitution is unlawful (contrary to law, arbitrary) if it was carried out not for reasons defined in the law and not on the basis of the procedure defined by the law. From the infringement of a fundamental constitutional right (55. § (1)) there arises, pursuant to the provision of the Constitution, a claim for damages, which may be enforced in a court. The penal-law rules for the enforcement of a claim for damages are contained in the provisions on extra-contractual liability of Act IV of 1959 on the Civil Code. If the deprivation of liberty was carried out in the course of the exercise of public authority, such as the punitive power of the state, the liability in question is subject to the provisions of paragraph 349 of the Civil Code dealing with liability for damage caused in the state administrative jurisdiction.

126. In addition to damages, which, according to the above-quoted ruling of the Constitutional Court, base compensation upon civil liability, cancelling the need for detailed statutory regulation inasmuch as its conditions are set forth in the Civil Code, there also exists a peculiar form of indemnification which owes its present complete form to the modernisation of the Code of Criminal Procedure through Act XCII of 1994. It was precisely in the interest

of achieving consistency with Article 9, (5) of the Covenant -- and Article 5, (5) of the European Convention on Human Rights -- that the need arose for the above legislation.

127. It must be stressed that, whereas in the case of damages, the rules of civil law prevail in their entirety i.e. the burden of proof as to the wrongfulness and illegality of the action causing the damage, the causal relationship and the amount of loss lies with the injured party, in the case of indemnification, civil-law provisions apply only to the mode and extent of the indemnification. Accordingly, in the latter case the convicted person is in a slightly more favourable situation, inasmuch as in the cases enumerated by the statute quoted above (para. 383 (1)) he/she is entitled to indemnity by force of the law, regardless of the guilt of the acting authorities.

128. It is noted that, under the amended rules, the decision concerning indemnity lies not with the Minister of Justice, as was the case previously, but with the court.

129. There has been substantial progress in the area of the safeguards available to persons deprived of their liberty (i.e. individuals taken into custody or arrested). The more important amendments bear on the following questions:

- in the area of military criminal procedure, paragraph 341 of the Code of Criminal Procedure, which regulated the ordering of preliminary arrest in regard to soldiers, has been replaced by the following new paragraph: "Pending the submission of the bill of indictment, the decision on the ordering and extension of preliminary arrest and committal for, and maintenance of, temporary compulsory medical treatment shall lie with the military judge of the county court; the appeal against the decision shall be determined by the Supreme Court."

- the opportunity for appeal against imprisonment based on an order imposing confinement (recourse to judicial proceedings) have already been discussed above;

- there is a new legal regulation governing the duration of detention: Act XCIII of 1994, amending the Code of Criminal Procedure -- under the provision amending paragraph 92(2) of the Code of Criminal Procedure – stipulates: "The detention may last for a maximum period of 72 hours, after the expiry whereof the defendant -- unless an order has been issued for his preliminary arrest -- must be set at liberty;"

- Act XCII of 1994 unequivocally declares that the decision on the committal for temporary compulsory medical treatment is under the control of the court; moreover, the same enactment declares that, if the duration of the compulsory medical treatment exceeds 6 months, regular review shall take effect;

- on the requirement set forth in Article 9, (5) of the Covenant (on the enforcement of the right to compensation in the event of unlawful arrest or detention), Act XCII of 1994 introduced a comprehensive provision into the Hungarian Code of Criminal Procedure. The new paragraph 383 of the Code of Criminal Procedure provides that, in circumstances specified by the law, indemnity is due for preliminary arrest and temporary compulsory medical treatment. Falling under this category of circumstances is the case where criminal proceedings have been discontinued because:

a) the action is not a criminal offence; b) it was not committed by the defendant; c) it cannot be ascertained that a criminal offence has been committed; d) there exists a circumstance which excludes criminal responsibility; e) the criminal responsibility has lapsed; f) the court has acquitted the defendant; g) the court has abandoned the proceedings because of the dismissal of the charge.

130. In Hungary, Parliament has recently passed several new Acts as part of the harmonisation with European Union law. In the course of the application of criminal law, restrictions of fundamental human rights are made on the basis of law and judicial decision, where the extent of these restrictions must be defined by act. Law-Decree 11, of 1979 on the enforcement of punishments and measures, as previously amended hereinafter: Enforcement of Punishment) -- in the accounting period, by Act XX of 1991, Act II of 1992, Act XXXII of 1993, and Act XLI of 1995, as well as by several verdicts of the Constitutional Court: 23/1990. (X. 31.) AB and 5/1992. (I. 30.) AB -- enumerates the fundamental civil rights that may be restricted during the time of the enforcement of punishments, particularly during a term of imprisonment, and specifies those rights which are in abeyance during the enforcement of imprisonment.

131. During the reporting period, Hungary acceded to several international treaties. Accordingly, March 1, 1994 saw the entry into force, in regard to the Republic of Hungary, of the European Convention on the Prevention of Torture and Inhuman or Degrading Punishments or Treatment, adopted in Strasbourg, which was ratified by resolution 271/1993 of the President of the Republic and promulgated by Act III of 1995.

132. In formulating the fundamental requirements for the treatment of detainees, Act XXXII of 1993, amending the Enforcement of Punishment LD -- which, in the regulation of the enforcement of punishment, took into account the recommendations on European Prison Rules of the Ministerial Committee of the Council of Europe -- showed due regard for the regulations of international conventions. Similarly, Act XXXIV of 1994 on the police also articulates the prohibition of torture, the forcing of confessions, as well as cruel, inhuman or degrading treatment.

133. Regularly performed prosecutorial inspections and inquiries considered the treatment of detainees to be lawful if it complied both with the prevailing legal regulations and with standards set by international conventions. An effective safeguard is provided by the fundamental principle set forth in paragraph 2(1) of the Enforcement of Punishment LD, under which the convicted person may be subjected only to the legal sanctions defined in the judgement and in the law. By virtue of the restriction of personal liberty, detainees were guaranteed protection by the state against unlawful treatment. Where the fundamental rights of particular individuals fall under restriction, there is a need for maximum protection to be applied against any possible abuse. The treatment of detainees was regarded as one of the key criteria in evaluating the prevalence of the rule of law.

Article 10

134. Law-Decree 11 of 1979 on the enforcement of punishments and measures, thanks to its amendment by Act XXXII of 1993, regulates in greater detail the duties and rights of convicted persons and the new restrictions of their civil rights due to the enforcement of punishment, while also specifying the particular rights which are to be in abeyance (para. 33-

36). These restrictions do not exceed the restrictions that follow necessarily from the system and the object of the punishment; while the rights guaranteed to convicted persons also include the rights promoting the study and education of convicted persons and, once they have served their full term, their reintegration into society.

135. Pursuant to paragraph 30of the same statute: "(1) During the execution of imprisonment, women shall be separated from men, and juveniles shall be separated from adults. (2) Convicted persons shall be housed alone or, failing the conditions for this, communally." Subparagraph a) of paragraph 119 (1) also provides for the separation of those under preliminary arrest; however, material conditions of detention do not always permit a full observance of that rule in practice.

Ensuring respect for the human dignity and self-esteem of detainees

136. The human dignity of the convicted person must be respected, the convicted person shall not be subjected to cruel, inhuman or degrading treatment; no medical experiment or scientific study or experiment shall be carried out on him without his/her consent Enforcement of Punishment LD paragraph 21(1). Under the provisions paragraph 1 of Interior Minister's order 11/1990. (II.18.) BM on the enforcement of detention and preliminary arrest in police prison, as modified by Interior Minister's order 22/1990. (VIII.13.), detainees shall be treated with humanity, with respect for the inherent dignity of the human being. In addition to creating the necessary physical conditions, the safeguards for the dignity and self-esteem of detainees include the appropriate selection and training of personnel and firm action by the administrators responsible for the detention against all manifestations of offences against the human dignity of the detainee.

137. Investigations carried out by prosecutors show that, in detention facilities, including penitentiary institutions and police holding facilities, the human dignity of detainees is generally respected; only in a small number of cases did the Public Prosecutor's Office discover any problems in this regard.

138. No case was reported to the Public Prosecutor's Office in which a detainee was subjected, in breach of the legal regulation referred to above, to medical experimentation or, without his/her consent, to scientific investigation or experimentation.

The proceedings in relation to detainees of the personnel of penitentiary institutions and police detention units

139. According to the findings of prosecutorial investigations and inspections, the proceedings in relation to detainees of the personnel of penitentiary institutions and police holding facilities generally comply with the requirements of firm and humane action. No case was reported in which order and discipline were enforced by cruel or degrading treatment. It might be stated that the past few years have seen a positive change the behaviour of prison staff in relation to detainees.

Coercive actions applicable against detainees

140. In the course of the lawful performance of his/her duties, a member of the penal authorities shall have the right to recourse to permitted means of coercion Enforcement of Punishment

LD. para. 20(3). Under paragraph 4 of Interior Minister's order 11/1990. (II. 18.), the police may use against the detainee legal means of coercion in order to end a severe disturbance, overcome resistance, and avert an assault. An enumeration of the means of coercion is contained in Justice Minister's order 8/1979. (VI. 30.) on the Regulations for the Enforcement of Punishment, as subsequently modified, and Act XXXIV of 1994 on the Police.

141. Under the prevailing rules, the straitjacket cannot be regarded as a means of coercion. Nevertheless, prosecutorial inquiries have uncovered several cases in which the detainee was subjected to the use of the straitjacket, especially in places where no secure cells for inmates displaying violent behaviour were available, pending the detainee's regaining composure to prevent him/her from causing harm to himself/herself.

142. Of the means of coercion enumerated in the statutory provision, physical coercion, teargas, and handcuffs were the ones resorted to most frequently.

143. Under paragraph 17(1) of the Regulations for the Enforcement of Punishment, only after a preliminary warning has been given may any means of coercion be used against the convicted person, or in order to avert a threat to the custody or safety of the convicted person. The warning may only be dispensed with in cases where circumstances are such as preventing its issuance. A similar prescription is contained in clause 166 of Interior Minister's order 1/1990. (I. 10) on the Service Regulations of the Police.

144. The investigations did not discover any cases where means of coercion were used in contravention to the above legal regulations. In general, when means of coercion were resorted to, it was done in order to prevent or end an assault by the detainee or a manifestation of violent behaviour on his/her part posing a danger to himself and to other persons. In order to ensure the interests attaching to the safeguards for the legality of the use of coercion, special care must be taken to make sure that neither the duration nor the extent of the use of coercion are in excess of those warranted for the effective enforcement of the measure and for the averting of the danger.

145. Under the prevailing rules, any use of coercion must be the subject of a written report, and the legality of the use of coercion must be investigated. The records made on the use of means of coercion normally contain the prescribed data and the fact that an inquiry into the legality of the measures has been carried out. However, in this area as well, prosecutorial examinations have revealed some occasional errors and deficiencies.

146. Paragraph 182 of the Safety Code prescribes that, subsequent to the use of means of coercion, the detainee shall be examined by a medical professional. If the use of means of coercion has caused physical injury, a member of the penal authorities shall provide first-aid and provide for medical attention to be given to the injured person. The prosecutorial inquiries have revealed some occasional deficiencies in the practice of the application of this provision as well.

147. In general, means of coercion were used mainly on justifiable grounds, and they were generally administered in a manner meeting professional standards.

148. There were generally no injuries during the use of coercion, and the ones that did occur took less than eight days to heal.

The tone used with detainees

149. According to the findings of the prosecutorial inquiries, the tone used with detainees by the personnel of penitentiary institutions and police holding facilities may generally be described as appropriate, although inquiries have revealed several cases that departed from that pattern.

Complaints and information by detainees relating to treatment

150. According to the findings of the prosecutorial inquiries, the complaints of detainees that do not provide a basis for a criminal investigation are not, in general, related to the conduct of prison and police officials, but tend to concentrate instead on the investigation in progress or the conduct of the police officers who carried out the arrest. However, there have been cases where a detainee complained of harassment.

151. The inquiries revealed no cases where the detainee was subjected to unlawful treatment because of his/her complaint or information.

Criminal proceedings relating to treatment

152. Apart from criminal offences against life, the criminal offences which may, in specific cases, also constitute violations of international treaties, such as the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Convention of the Council of Europe Against Torture, are: the extortion of confessions (Criminal Code, para. 227), ill-treatment during official proceedings (Criminal Code, para. 226), unlawful detention (Criminal Code, para. 228), and such abuse of authority as may be related to the treatment of detainees (Criminal Code, para. 225).

153. In 1993, criminal proceedings were instituted against 214 persons in Hungary because of offences committed during the performance of their official duties, offences governed in paragraphs 225-228 of the Criminal Code; while the comparable figure for the first half of 1994 was 114. Of these, charges were brought in 189 cases in 1993, and in 103 cases in the first half of 1994.

154. There is no single nation-wide record on criminal offences committed against detainees by prison officials and the police. Hence it was not possible in every instance to establish with absolute certainty the distribution of offences committed during the performance of official duties between prison and police officials. Similarly, in several cases, it was not possible to isolate within the offences committed by police officers in the performance of their duties the criminal proceedings that had been instituted against prison staff.

155. In a relatively large number of the criminal proceedings instituted against prison guards for unlawful treatment, the investigation was refused or abandoned. These may partly be traced back to the information being ill-founded and partly, as has been pointed out by several prosecutorial reports, to the inability of detainees to produce appropriate evidence when

submitting information to the Office of Investigations of the Public Prosecutor's Office or the prosecutor overseeing the penal system. In many instances, no additional evidence apart from the claim of the complainant was available.

156. If, during the disciplinary procedure, a well-founded suspicion arises that a criminal offence has been committed, a disciplinary procedure is instituted after an information has been submitted, without waiting for the outcome of the criminal proceedings.

The actions of the commanding officers of penitentiary institutions and of the chiefs of central police stations in the event of unlawful treatment; exacting compliance with the rules of enforcement from detainees

157. The inquiries showed that directors of places of detention tend to take a firm line with personnel responsible for abuse, and that complaints of this nature are looked into in a reasonably satisfactory manner.

158. The inquiries revealed several cases where detainees were given unlawful privileges. There were instances, too, of illicit collusion or relationship between prison staff and detainees. Against the workers of the afore-mentioned places of detention, criminal or disciplinary proceedings were instituted.

Observance of the prohibition of discrimination against detainees

159. The inquiries revealed no cases where it might be proved that the detainee was subjected to discrimination, in breach of the Enforcement of Punishment LD, paragraph 2(3), on account of his/her national and ethnic background, religious or political conviction, social origin, sex or property status. Complaints on that score were only rarely lodged.

The legality of the treatment of individuals undergoing compulsory medical treatment

160. Under paragraph 83(1) of the Enforcement of Punishment LD, compulsory medical treatment is provided by the Forensic Institute for the Observation and Treatment of Mental Illness. In the years 1997-1998, no means of coercion were used against those undergoing compulsory medical treatment; detainees did not submit complaints. In the period under review, criminal proceedings arising out of unlawful treatment of a person undergoing compulsory medical treatment were instituted on one single occasion.

161. In summary, it might be stated that, apart from some occasional shortcomings revealed by the surveys and some incorrect practices occurring in certain places, the treatment of detainees, on a nation-wide basis, generally complies with the standards contained in international conventions and the provisions of the prevailing laws.
Because of overcrowding in some places, housing conditions for detainees do not, as yet, measure up to European norms; however, these may be regarded as objective circumstances

that do not form part of the treatment. Given the importance of human rights protection, the Public Prosecutor's Office places increased emphasis on ensuring the legality of the treatment of detainees, with special regard to the human rights standards laid down in international documents.

162. Special mention must be made of the preliminary arrest of juveniles. Having regard to the UN Convention on the Rights of the Child and to the problems generally existing in the administration of criminal justice, Act XLI of 1995 on the amendment of penal statutes fundamentally altered the rules governing the preliminary arrest of juveniles.

163. Under paragraph 13 of the new Act, preliminary arrest, even where the general reasons for it are present, is only admissible if it is necessary given the gravity of the criminal offence.

164. Whereas penitentiary institutions and police holding facilities are currently the only places for holding juveniles for preliminary arrest, the options will, in the future, also include the reformatory. As to the manner of enforcement, the decision -- taking account of the personality of the juvenile or the nature of the criminal offence he/she is suspected of -- is in the discretion of the court.

165. In view of the fact that the existing reformatories need to be enlarged and the need for new facilities, the provisions on the enforcement of preliminary arrest entered into force on May 1, 1996.

166. The separation of juveniles from adults in custody remains the practice.

167. Act XXXII of 1993, which entered into force on April 15, 1993 -- amending Law-Decree 11 of 1979 on the enforcement of punishments and measures -- brought the following changes in the implementation of Article 10 of the Covenant:

1. The Act makes the appeal of a verdict of the correctional judge universal, also providing for remedies against a decision of the penal institution imposing solitary confinement.

2. The statute introduces elements of what is called a semi-liberty enforcement régime: in the prison and house of correction categories, it permits the application of more lenient rules of enforcement, assigning the relevant decision to the jurisdiction of the correctional judge.

3. The possibilities for rewards and disciplining changed. Added to the list of rewards was the possibility to leave the facility for brief periods, and, even in houses of correction, permission may be granted for short leaves of absence. The types of disciplinary punishment that had proved ineffectual in practice or which do not serve the purpose of the enforcement of punishment were abolished (leaving 3 types of disciplinary punishment: the reprimand, reduction of the sum provided for personal needs, and solitary confinement).

4. As regards the accommodation of convicted persons, the statute contains the following general rules:
- prison detention shall, as far as possible, be enforced in the penitentiary institution nearest to the domicile of the convicted person,
- convicted persons shall be housed separately; however, if conditions do not permit this, they shall be housed communally.

5. Under the statute, the convicted person is, after one year of work, entitled to 20 days of paid leave (instead of the formerly possible 5 days).

6. As a new legal institution, the Act -- with a view to promoting the observance of the right of an individual to pay his/her last respects -- allows the convicted person to attend, with or without supervision, the funeral of a relative or visit a seriously ill relative.

7. The amendment substantially affects the position of persons remanded into custody: the court shall not oblige a person remanded into custody upon being convicted under a non-final judgement to do work, and such a person shall not be transported to an institution corresponding to his/her grade.

Article 11

168. There have been no changes in the reporting period.

Article 12

169. The notion of compulsory place of accommodation designated by the immigration police authority may be regarded as a novelty in Hungarian legal regulation. This may be the customary accommodations of the foreigner (hotel, apartment of relatives), with the stipulation that he/she is obliged to report to the local police authority at stated intervals pending his/her case (He/she may be expelled later or be subject to some other procedure). If the foreigner possesses no pecuniary means of his/her own (e.g. has no relatives, sufficient funds, return ticket etc.), the communal residential facility maintained by the police authority may be designated as the compulsory place of accommodation. The foreigner is charged a fee for his/her stay, which he/she must reimburse upon his/her return home and prior to his/her repeated entry into Hungary. If he/she fails to do so, he/she will be put on the list of undesirable persons. The decision about compulsory accommodation may be appealed within five days.

170. The regulations for communal residential facilities are contained in the annex to Government Decree 64/1994. (IV. 30.). Pursuant to this, in facilities specially set up for this purpose (at present, there are eight such facilities operating in various regions of the country)

- men and women shall be separated;
- provision shall be made for the board, personal hygiene, and urgent medical care of the occupants, they shall be provided with sleeping places and personal belongings,
- occupants shall be guaranteed the practice of religion, correspondence, availability of telephone, free contact with the consular representations and their legal representatives,
- occupants shall have the opportunity to exercise their right to lodge complaints in accordance with the provisions of the regulations.

171. In practice, major problems are posed by providing access to interpreters, the granting of permission to leave the accommodation facility, and ensuring civilised conditions of accommodation and provision. According to a 1994 on-site inspection by Hungarian NGOs and the Council of Europe's Committee Against Torture, there are numerous areas that would need to be improved in the residential facilities in the interest of creating more humane

conditions of accommodation. Therefore, at the end of 1994, the police took several measures to this end (specifically, ordering, for instance, the education of residential facility staff in basic human rights, the immediate refurbishment or closure of particular police cells, the improvement of public-health and hygienic conditions at the residential facilities, compulsory medical check-ups prior to admission to the facility, and, where possible, the employment of a psychologist). In 1995, one national residential facility was closed down on account of a variety of shortcomings.

172. Unlawful restriction of liberty provides foreigners with a legitimate claim to compensation, but only to the extent of the actual damage inflicted. In the event of a dispute, the decision on the application lies with the court, which must give due consideration to the extent to which the foreigner has been instrumental in the imposition of the unlawful measure (e.g. escape, evasion of previous measures taken by the authorities).

173. The confiscation of passport, among the rules restricting the movement of foreigners, is used to prevent the departure of the foreigner. Whereas a passport is confiscated for the time necessary to record or check personal data, it may be also withheld when some other public proceedings (regulatory offence or criminal proceedings) are being instituted. The latter are ordered by an appealable, formal decision, while making sure that the foreigner is provided with appropriate identification documents.

174. For the supervision of the obligations of foreigners under the aliens legislation, the Immigration Act has given wide-ranging powers to the law-enforcement agencies (e.g. the power to conduct identity checks, enter into private homes, or examine motor vehicles and packages).

175. Another important element of the codification is that a statutory regulation be carried out of the types of coercive measures, restrictions of liberty, and powers of supervision available to the police when such become necessary for reasons of public safety, law-enforcement, and crime-fighting, the conditions under which they may be ordered, and the principal legal safeguards for persons under the jurisdiction of the Hungarian authorities.

176. In general, the period under review witnessed a tightening of the statutory conditions for the use, imposition, and enforcement of the restriction of personal liberty by the police.

177. The last comprehensive review of the criminal custody system by the Public Prosecutor's Office was carried out in 1997. In the course of that survey, it was found that, compared to the '80s and in relation to the total number of suspects, the number of those taken into custody had approximately doubled. At the same time, the number of those detained under preliminary arrest had dropped by half. Underlying the changes is a statutory modification of the jurisdiction of the authorities, as the authority to decide on preliminary arrest was transferred from the investigating agency to the courts, which arrive at their decision after a thorough deliberation. However, the rise in the number of those taken into custody was, in all probability, partly the result of a parallel rise in the number of suspects. The investigating agencies seek to keep the duration of the custody to a minimum; in 25 per cent of the cases, custody was terminated within 24 hours, and in 40 per cent of the cases, within 48 hours. The fact that, in the case of 15.5 per cent of the suspects taken into custody, the investigation had to be abandoned because a well-founded (prima facie) suspicion did not exist or had disappeared is to be explained by negligence.

178. In the event of detention, temporary measures must concurrently be taken for the protection of any persons requiring care (e.g. persons unable to look after themselves, sick persons, minors left behind in the home of the person taken into custody) and any private property left unguarded (e.g. by sealing an apartment in the presence of witnesses, putting valuables in a safe place etc.).

179. Prison detention, which represents a restriction of personal liberty, was re-regulated at statutory level -- in accordance with the criteria embodied in the European Convention on Human Rights (Act XCII of 1994). Pursuant to this, soldiers serving in the armed forces under the conscription system holding the ranks of private or non-commissioned officer may be confined for a maximum period of 21 days on the orders of a commanding officer. There is an opportunity for complaint against the decision, and, thereafter, for a single-level judicial review, which has delaying force. This diminished the commanding officer's powers of decision-making, establishing, in this sphere as well, the opportunity for the courts to control the legality and the merits of particular cases.

180. Entry into private homes by the police is subject to conditions stipulated by law (Police Act para. 39-40). As a principal rule, such entry may be carried out by admission, under the decision of a public authority (e.g. on the basis of arrest and search warrants), and, in exceptional cases, in the event of necessity, as provided for in the law (e.g. in order to prevent a criminal act, because of public danger, an extraordinary death, or in order to protect a facility). By contrast, in respect of other places not falling within the definition of private home, the police officer has general powers of entry, unless otherwise provided for in the law. Following the entry, he/she must carry out the necessary measures with maximum observance of the regulations of the institution.

181. The obligations Hungary had assumed under the Covenant were affected by the amendment on the Enforcement of Punishment LD (Act XXXII of 1993), which also sets out the rules governing preliminary enforcement and the position of persons held in police detention facilities. Under Article 10, (1) of the Covenant, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The Police Act and the Enforcement of Punishment LD created a more favourable legal situation for detainees than had been the case before. Juvenile suspects held in detention are provided with more safeguards by the statute amending the enforcement of punishments and measures used against them (Act XLI of 1995).

182. The enforcement of detention in a police holding facility is laid down in decree 11/1990. (II.18.) BM. r. which has, by now, become obsolete -- partly on account of the statutory provisions adopted during the reporting period (Enforcement of Punishment LD, Police Act). Work has begun to bring the regulation up-to-date. An amendment, made as far back as 1990 (22/1990. (VIII. 13.) BM. r.), represented a step forward as it guaranteed the opportunity of practising one's religion in the detention facility.

183. Under the Police Act, the rights of a detainee may be restricted only to the extent that it is necessary to prevent escape or hiding, the destruction or manipulation of evidence or the commission of a new criminal offence, and to maintain the safety and order of the detention unit (para. 18(2)). The principal rights to be guaranteed, based on statutory norms, in the detention facility are the following:

- cellular separation (according to sex and state of health, separation from each other of persons suspected of the identical act, and, if possible, separation of individuals with a criminal record from those with no previous convictions, separation of juveniles from adults).

- persons detained under the Immigration Act, unless the detention is carried out in a penitentiary institution, are held in police detention units, separating foreigners from delinquents (Act LXXXVI of 1993, para. 37).

- the times for meals, washing, and medical checks shall be regulated in a timetable. The detainee shall be informed of the timetable, and the main points of the timetable shall be displayed on the interior side of the cell-door.

- detainees shall be given their meals in their cells.

- detainees shall be ensured the right to file petitions and complaints. To this end, every detainee shall be heard and questioned on a daily basis.

- free practice of religion.

184. To improve the accommodation capacity and the conditions of operation of police holding facilities, the police drew up a detailed detention facility modernisation programme. To help fund the programme, a sum of 300 million HUF was approved as a programme subsidy, in two stages. As a result, by 1993 each county was provided with a central detention facility. The tasks arising from the liberalisation of detention had been carried out. Between 1991 and 1994, 11 detention units were constructed, with 4 others under construction. According to a National Central Police Department survey conducted in 1994, 58 detention facilities would need remodelling, so that every one of them could provide adequate levels of lighting, natural light, ventilation, and personal hygiene, as well as access to fresh air, exercise for detainees, and improvement of safety. However, it is impossible to remodel all detention facilities; hence it would be necessary to build 26 new facilities to replace the ones currently not available. This was one of the insights prompting the Government, in its review of the tasks relating to public safety, to decide that greater attention must be devoted to the setting up of police and border police barracks and detention centres, while also enlarging and modernising the existing facilities.

185. Act LXXXVI of 1993 on the entry, stay in Hungary, and immigration of foreigners guarantees foreigners free movement in the territory of the country, as well as entry and immigration into the country. The restrictions are in line with the provisions of Article 12, (3) of the Covenant. A ban on entry and stay may be imposed against those who commit a criminal offence or some other infraction. The justification for the ban comes under regular review. In addition to a ban on entry and stay and the uncertainty of possessing the means of support, the immigration permit may also be refused if the foreigner is manifestly unlikely to integrate into Hungarian society. In connection with this provision, however, paragraph 22(4) states, as a safeguard, that "in accordance with the prohibition of discrimination (...), the race, skin colour, sex, mother tongue, religion, political or other opinion, national or other social origin, and birth status shall not be qualified as a barrier to integration into Hungarian society."

186. In Act XXXI of 1993 the Republic of Hungary ratified the Convention on the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, and its eight supplementary protocols, the 4th of which reaffirms the right to freedom of movement.

187. The freedom of travel of Hungarian citizens was regulated in Act XXIX of 1989 on emigration and return, stipulating that not only do Hungarian citizens have an inherent right to leave or exit from the country, but that the return to the country, too, is an inherent right of Hungarian or multiple nationals residing abroad. The right of exit may be restricted only in cases specified by law (Act XXVIII of 1989) within the framework of the passport issuance procedure. At the same time, there have been several criticisms levelled against the restrictions relating to emigration, concerning primarily their practical applicability (restrictions in the event of debt owed to the state, liability to military service, failure to comply with supporting obligations), hence work on bringing the legislation up to date was begun.

188. The Immigration Act (Act LXXXVI of 1993) states the manner in which the certification of return and Hungarian citizenship is carried out in order to ensure this inherent right. Pursuant to the Act, Hungarian citizenship may, in the Immigration procedure, be verified for Hungarian citizens resident abroad by a valid Hungarian passport or a certificate of citizenship issued not earlier than one year previously.

Article 13

189. Foreigners, as before, do not have an inherent right of entry or stay in the country or to obtain residence permits; these matters are decided within the discretionary jurisdiction of the immigration police authority by a formal decision. An appeal, via public administrative channels, may be exercised (except for the refusal of a visa) handed down by a public authority (e.g. turning back from the border, expulsion, refusal of a residence permit of a validity exceeding one year); following this, there is the possibility of recourse to judicial review. In the case of certain administrative decisions, there is recourse to direct judicial legal remedy (hearing before a court; e.g. against the refusal of a residence permit of a validity of less than one year, an order for detention under the Immigration Police Act or one assigning a compulsory place of residence).

190. Authorities may turn back an applicant from the state border if he/she does not possess the appropriate travel or motor vehicle documents, financial means of support as stipulated by law, or intends to enter the country by other than the designated border crossing point or in a motor vehicle that does not comply with traffic safety requirements, or if his/her continued journey, return, or stay (accommodations, ticket) is not guaranteed, he/she poses a danger to public health, or if, independently of all these, he/she is on the list of undesirable persons (is under the force of a ban on entry and stay, e.g. on account of a criminal offence previously committed in Hungary, or because of illegal work). If a person put on this prohibition list has already entered the country, an order for his/her expulsion may be issued within the framework of an administrative procedure and also on the basis of a court sentence. The list of foreigners banned from entry and stay shall annually be reviewed by the immigration police authority, having regard to the rule that, once the reason for imposing the ban has ceased, the person in question must be removed from the list.

191. It is in accordance with the practice of the European Convention on Human Rights that paragraph 32 of LXXXVI of 1993 on the entry, stay in Hungary, and immigration of foreigners formulates the prohibition of expulsion or sending back: "A foreigner shall not be sent back or expelled into a country or to a territory where he/she would be exposed to the danger of persecution for reasons of race or religion or because of his national or social origin or political opinion; nor, moreover, to the territory of a state or to a territory where there are compelling reasons to fear that the foreigner sent back or expelled would be exposed to torture or inhuman treatment."

192. Appeal and other legal remedies are available against an order of expulsion. Although it is possible to issue an order for the preliminary enforcement of the expulsion order, the law states that "No order for preliminary enforcement shall be issued against a foreigner who, in his/her petition for appeal, offers a plausible case that his/her expulsion infringes a human right or liberty ensured to him/her under an international treaty assumed by the Republic of Hungary."

193. The 4th supplementary protocol of the European Convention on Human Rights, ratified by Act XXXI of 1993, prohibits the collective expulsion of foreigners – a document that is binding on the Republic of Hungary and with which both the legal regulation and practice comply.

194. In regard to immigrant aliens who possess a residence permit valid for an indefinite period ("blue card"), expulsion is applicable under certain circumstances only (because of criminal offences of a graver description, and after a stay of a pre-determined length in Hungary, it is not applicable at all). One of the reasons for this is that, in the case of the expulsion of persons residing in Hungary with their families, the right to family life and the right of the child to be raised within the family would be prejudiced. On the other hand, in cases where serious acts have been committed, prosecution within Hungary is resorted to more frequently.

195. Deportation -- i.e. expulsion executed under official escort -- is applied only in cases where the foreigner expelled has been released from prison following a sentence imposed for a pre-meditated criminal offence, or if he/she is in detention under the Immigration Act, or if the supervision of his/her departure is necessary in the interest of the security of the country, the implementation of international treaty obligations or in the interest of public order.

196. Under the Immigration Act, foreigners who have already been expelled but are considered security risks (e.g. because they have refused to voluntarily comply with the expulsion order or are hiding from the authorities) may, pending the enforcement of the expulsion, be detained. In accordance with the principle of habeas corpus, the local court shall, within five days counting from the issue of the order, examine the legality of the measure and rule on whether it should be discontinued or maintained, pending the creation of the conditions for departure (e.g. visa for return home, document, air ticket). Beyond six months, the decision as to whether the detention should be maintained is under the control of the county/metropolitan court, having regard to the rule that the detention shall be enforced in a penitentiary institution (only detention of a duration of less than 30 days is enforced in police holding facility). The detailed rules governing the detention are set forth in a Justice Minister's order (e.g. separation from common criminals; the designation, for the whole country, of one penitentiary institution for men and one for women; obligatory registration.) (1/1995. (I.6.) IM. r.)

Article 14

197. There have been significant changes as regards Hungary's obligations under Article 14, which sets forth the elements of safeguarding a fair hearing. Part of these changes were embodied in Act XCII of 1994, mentioned above:

- for instance, the amended Article 77 of the Code of Criminal Procedure stipulates equal opportunities for the parties; according to the new safeguard, "if, in the course of the investigation, the authority has designated an expert witness, the court shall, at the request of the defendant or the counsel for the defence, also designate, for the same case, another expert witness".

The right to apply to a court

198. Since the previous report, access to the courts has considerably widened where Article 14, (1) makes it obligatory for the states parties to the Covenant

a) the introduction of the judicial review of confinement applied against a conscripted private or a non-commissioned officer, and

b) the broadening of the judicial powers relating to committal to compulsory psychiatric treatment were already detailed under the heading of Article 9.

c) As a result of the decriminalisation of certain criminal offences, mostly those of a less grave character, the determination of what are called "regulatory offences" falls within the jurisdiction of the administrative authorities (local government, police); and, under the current regulations, there is no access to the courts against the definitive decisions of these authorities. This formula is inconsistent with Article 14, (1), which affirms that, when facing a charge, everyone has a right to have his/her case determined by a court. Therefore, a remodelling of the regulatory offence procedure was undertaken with the aim of establishing a formula under which it would be possible to request the court to review a definitive regulatory offence decision. This is a reform of such magnitude that it will take some years to establish the appropriate conditions for it.

d) Act XC of 1994, amending Law-Decree No. 4 of 1983 on the legal profession, established in the disciplinary procedure of legal counsels the right to apply to a court of law against a disciplinary decision handed down by a court of second instance.

It is the county (metropolitan) court that has jurisdiction in the procedure. The court proceeds in accordance with the rules of administrative lawsuits. It may put the enforcement of the disciplinary decision in abeyance or court annul or alter an unlawful decision by the disciplinary commission and, if necessary, direct the disciplinary committee to start a new procedure.

e) Act XXVI of 1991 radically extended and made into a cardinal rule the judicial review of administrative decisions. This means that only in cases where the law so provides is a judicial review ruled out. These include: where the decision serves the execution of a final judicial decision; if the decision is of a temporary nature and a final decision must be passed within a

period fixed by law; state administrative decisions passed in regard to the licensing of foreign trade activity in goods, services, and rights representing material value or similar decisions governing the manufacture and distribution of firearms, ammunition, radioactive materials, and drugs; decisions ordering persons liable to military service to report to the recruiting panel, to report for military medical examination, or for compulsory medical treatment for the purpose of determining a request for leave to perform non-combatant military service and civilian service, or for some other purpose; decisions determining fitness for military service or ordering the induction of a person liable to military service; in the case of civilian service, the decision designating the employer, the decision summoning a person to commence civilian service; decisions on the retention of persons in military service, and, during a mobilisation, decisions mandating that the reservist remain in his/her civilian job; and state administrative decisions obliging persons to perform civil defence service and those passed in relation to the protection of order at the state borders.

199. Judicial control over administrative decisions is implemented within the organisational framework of the regular courts. Recourse to the courts may be performed only if all administrative remedies have been exhausted. The ruling of the court may be appealed in accordance with the general rules of the Code of Civil Procedure or there is a possibility to apply for a review. As a result, the first-instance administrative decision passes through a four-level control system (a two-level administrative procedure and a two-level judicial procedure).

200. According to the principal rule, the powers of the court extend to setting aside an unlawful decision (and, if necessary, to directing the administrative agency to start a new procedure); but the statute enumerates all the various types of cases where the court may also alter the decision.

Judicial independence and impartiality

201. The concept of judicial independence is used in a dual sense. On the one hand, it denotes the independence of the judiciary as a whole; on the other, it means the independence of a particular judge ruling on a particular case.

202. A) The best indication of the independence of the judiciary is the way in which it relates to the other branches of government and the kind of system in which the administration of justice works.

203. Under the earlier regulation, county courts and local courts functioned under the administrative oversight of the Minister of Justice. In this sphere, the most important tasks of the Minister of Justice were the following:

- ensuring the personal and physical conditions necessary for the functioning of the courts,
- directing and supervising the administrative activity of the presidents of the courts,
- appointing the presidents and deputy presidents of the county courts, the Capital's Metropolitan Court, and the Central District Court of Pest, as well as the heads of the boards.

204. The Minister of Justice exercised these powers in conjunction with the National Judicial Council (NJC), made up of representatives of the county courts and those of the capital's Metropolitan Court, the members being elected at plenary meetings of county judges. The agreement of the NJC was required for submitting the annual budget plans for the courts, for the apportioning among the counties the budget for the courts, and for the division of the wage and staff development. The NJC passed comments on the courts and on draft legislation affecting judges.

205. The administrative powers of the Minister of Justice and the National Judicial Council did not extend to the Supreme Court, whose president is elected, on the proposal of the President of the Republic, by Parliament for a six-year term by the vote of two-thirds of the MPs.

206. The Act of 1997 on the organisation and administration of the courts (see text in Annex 19) brought fundamental changes in the administration of the judiciary:

207. It abolished the Supreme Court as a separate administrative entity, integrating it instead into the judiciary both organisationally and budgetarily.

208. At the same time, the administrative jurisdictions of the executive over the judiciary were abolished, resulting in the emergence of an administrative structure that is unique in Europe, embodying the autonomy of judiciary.

209. The Minister of Justice handed over his/her jurisdiction concerning the administration of the courts to the National Council for the Administration of Justice (NCAJ), a 15-member body chaired by the President of the Supreme Court. Nine judge members of the Council are chosen by the courts via delegates; while those having ex officio seats on the Council include the Minister of Justice, the Chief Public Prosecutor, and the President of the National Bar Association, with one MP designated by Parliament's Constitutional and Judiciary Committee and one by Parliament's Budgetary and Financial Committee.

210. The principal tasks of the NCAJ:

- drafting and submitting to the Government the budget proposal relating to the section dealing with the courts. If the budget proposal submitted to Parliament by the Government differs from the proposal of the NCAJ, the Government must set forth in detail the original proposal of the NCAJ, stating the reasons for the discrepancy,
- performing the tasks relating to the management of the budget section dealing with the courts,
- appointing and relieving the president and deputy president of the Court of Appeal and the county court, the head of the board, the head of the Office and his/her deputy,
- directing and supervising the administrative activity of the court presidents who fall within its powers of appointment,
- determining the basic principles of the organisational and operational rules of the courts and approving the organisational and operational rules of the Courts of Appeal and county courts.

211. The President of the NCAJ informs Parliament annually of the general situation of the courts and the administrative activity of the NCAJ.

212. Working alongside the NCAJ is an Office, whose task is to prepare and implement decisions and supervise their implementation. It is headed by a professional judge appointed for an indefinite term.

213. As regards the independence of the judiciary, it must be emphasized that the budget of the courts forms a separate section in the state budget, fixed annually by Act. After its formation, the NCAJ also took over from the Minister of Justice the statutorily defined duties of the treasurer of the relevant budgetary section.

214. B) The independence of judges is ensured by the following regulations:

The conditions and procedure of becoming a judge

215. Under the earlier regulation, the eligibility criteria for appointment as a professional judge included a clean record, Hungarian citizenship, the possession of the right to vote, a minimum age of 24 years, the holding of a university degree in law, and the passing of a special higher examination defined in a special statutory provision.

216. Judges would be appointed by the President of the Republic for an indefinite period. The submission for the appointment of the judge would be made by the Minister of Justice, based on a proposal made by the president of the county court with the assent of the Council of County Judges. Within eight days counting from his/her appointment, the judge would take the oath.

217. The service relations of the judge are terminated by his/her release from office, by a final court sentence prohibiting him/her from taking part in the conduct of public affairs, or the death of the judge.

218. The provisions of Act LXVII of 1997 on the legal status and remuneration of judges, which entered into force on October 1, 1997, considerably tightened the conditions of becoming a judge in order to make sure that the career of a judge attracts the lawyers best qualified for the job -- best qualified, that is, in terms of personality and professional expertise.

219. Within this framework, the new statute stipulates that, prior to their appointment as judges, aspirants spend 3 years practising as court clerks and 1 year as secretaries.

220. As of October 1, 1998, candidates must, prior to their appointment as judges, undergo a career aptitude examination, which includes an examination of physical, and psychological fitness. Moreover, the statute stipulates that recruitment for all judges' posts must be conducted under an open competition system.

221. In a departure from the previous rules, the first appointment of the judge is valid only for three years; only after that period do judges receive their appointment for an indefinite period. Prior to the expiry of the three-year period, an evaluation must be made of the judge's work during the entire term of his/her activity, which shall form the basis on which to determine whether the judge is fit to be appointed for an indefinite term.

222. The criteria under which the inquiry must be conducted and the procedure itself are regulated in detail by the statute.

223. The appointment of judges continues to lie within the jurisdiction of the President of the Republic, but the submission, no longer a task of the Minister of Justice, is now made by the NCAJ, which, to make the submission, must first obtain the proposal of the president of the court and that of the body of judges.

The provisions on judicial independence of the Constitution and the Law on the Organisation and Administration of Courts

224. The Constitution declares that judges are independent and are subordinate only to the laws. Judges shall not be members of any party, nor shall they engage in any political activity (Constitution, Article 50(3)).

225. Spelling out the above in greater detail, the new Act on judicial organisation (Annex No. 19.) provides that judges shall decide in accordance with the statutory provisions and shall not, in relation to their activity of administering justice, be subject to any pressure or any orders.

226. Judges are immune from prosecution; they shall not be the subject of any criminal or regulatory offence proceedings, nor of any coercive measures taken as part of such proceedings except by authorisation of the appointing authority. Judges may renounce their immunity in respect of any proceedings brought against them for regulatory offences.

227. Judges may set up interest-representation or professional associations.

228. A judge may, without his/her consent, be assigned to temporary duties no more frequently than once in 3 years, for a maximum period of 1 year, and only within the area of competence of the county court concerned.

229. Transfer to another court is subject to the judge's consent.

230. The new Act on the legal status of judges represents a step forward in the safeguarding of judicial independence, inasmuch as, for the first time in decades, judges now have a status law which, in addition to setting out the conditions of becoming a judge, regulates in detail the rights and obligations of judges, thereby giving guidance for a practical interpretation of the concept of judicial independence. The provisions of the statute regulate the legal status of judges in conformity with the fundamental principles expressed in the recommendations on judicial independence of the Ministerial Committee of the Council of Europe.

231. No judge may refuse to perform his/her duties of administering justice; the judge shall, in the cases entrusted to him/her, proceed continuously and conscientiously.

232. The prohibition of party membership and political activity has been tightened even further through the addition of a provision requiring that any judge standing as a candidate in parliamentary or local government elections be relieved of his/her judicial function.

233. Beyond the performance of the duties of his/her office, a judge may engage in no other activity than creative work in an academic, artistic, literary or technological field, but he/she must not, by doing so, jeopardise, or create the impression of jeopardising, his/her

independence and impartiality; nor shall he/she thereby neglect the discharge of his/her official duties.

234. The statute restricts the participation of judges in commercial companies by their personal involvement or unlimited liability, for that could jeopardise their independence.

235. A professional judge may not be a member of a court of arbitration.

236. The statute also pre-empts the possibility that ties of family relationship between judges and presiding judges should create an impression of a prejudice to judicial independence. In particular, the statute prescribes in such cases an obligation to end the conflict of interest.

237. The obligations of judges embodied in the legislation include the conduct of a fair procedure, the obligation of secrecy, and decent and impartial conduct towards the parties.

238. The regulation lays special emphasis on the requirement that judges, even when not administering justice, must conduct themselves in an irreproachable manner worthy of their office. It is a new rule that, outside his/her service relations, a judge shall not publicly express an opinion on a case currently in progress or one previously heard by a court of law.

239. The judge shall adjudicate the case entrusted to him/her within a reasonable time limit subject to the amount of work required by the case and the specifics of the procedure; but the law also prescribes that the caseload of the judge be determined in such a way that it allows him/her to fulfil the above requirement.

240. After a year of judicial practice, the head of the court may, on request, give the judge permission to limit his/her court work to the judicial day; however, in the event that the judge fails to perform his/her work in an appropriate manner or repeatedly or seriously falls behind schedules in dealing with cases, the permission may be revoked.

241. Also forming part of judicial independence is the professional independence of the judge, which can be ensured only by maintaining the professional knowledge at an appropriate level. Hence the new regulation also gives emphasis to the question of the continuous professional training of judges, declaring it to be a particular right. Judges are entitled, free of charge, the training necessary for the independent administering of justice.

242. Previously, these training courses were organised and co-ordinated by the Ministry of Justice, but, as of October 1997, this has been a task of the NCAJ.

243. In order to ensure the professional development of the judge, the new Act provides for the regular evaluation of the judge's work. This means that the work of the judge must, subsequent to his/her appointment for an indefinite term, be evaluated at six-year intervals, on two occasions.

244. The new Act, too, assigned crucial importance to the rules concerning the disciplinary responsibility of judges; although, as regards the contents of the regulation, the traditionally tried-and-tested provisions remain in place. A judge commits a disciplinary offence if he/she intentionally violates his/her obligations relating to his/her service relations or if, by his/her mode of living or conduct, he/she compromises or imperils the prestige of the judicial office.

245. The disciplinary punishments which may be imposed against a judge are as follows: rebuke, reprimand, reassignment of the judge to the pay category one grade below his/her current salary scale, and a proposal that he/she be relieved of his/her duties as an executive or from his/her duties as a judge.

246. The disciplinary procedure is subject to highly detailed regulation, and there is a recourse to remedy against the decision.

247. The most frequent cause of disciplinary actions is undue delays in the dispatch of his/her duties.

The security of the judge's career

248. As regards the closing of a judge's career, crucial to ensuring judicial independence is the way in which the appointment of a judge can be terminated. On this question the old and the new rules are in harmony, cancelling the need for providing additional safeguards. As regards judges appointed for an indefinite term, the appointment shall not be terminated except if the President of the Republic relieves him/her of his/her office or upon his/her death. He/she may, at any time, resign from his/her post without offering any reasons; in this case, he/she must be relieved of his/her office. Other grounds for relieving him/her of his/her office include a decision declaring him/her to be unfit, for health or professional reasons, to discharge his/her duties; the attainment of the retirement age; and a final decision imposing disciplinary punishment for a disciplinary offence.

249. The new regulations alter the above by way of regulating in detail the conditions of the appointment for an indefinite term of a judge who, in the first stage, was appointed for a fixed term; and there is an obligatory release on the attainment of age 70.

The remuneration of judges

250. The new statute on the legal status of judges declares it as a fundamental principle that judges are entitled to emoluments corresponding to the dignity of their office and ensuring their independence. The system of remuneration is contained in the law, expressing the principle that the status of the judge is defined by the appropriate income.

251. The rules in force differ substantially from the regulations entering into force on July 1, 1998, but both systems of remuneration share the characteristic that the amounts concerned are fixed by Act, the system of advancement is based on objective criteria and is predictable, leaving no room for the independence of the judge to be influenced by altering his/her remuneration.

252. The rules in force fix the basic salary of judges as a product of the civil servants' salary base, any change in the salary base will produce an automatic change in the income of judges as well. In addition, judges are entitled to a judge's allowance, which is, at present, 35 per cent of the basic salary. Heads of courts receive, in addition, a supervisor's allowance.

253. The basis of the system of advancement is length of service and the level of the courts, which determines the placing of judges in pay categories and grades, with a single-step promotion every 4 years into a higher salary grade.

254. Naturally, if a judge performs exceptionally high standards in his/her work, the head of the court, after having obtained the position of the competent judicial body, may on a single occasion assign the judge to the pay category one grade above his/her current salary bracket.

255. The new system of remuneration and advancement will represent a fundamental change, for it will cut the link between the remuneration of judges and the basic salary of civil servants. It will fix the monthly basic salary of junior judges and determine all remunerational items as a percentage thereof.

256. Length of service will form the sole basis of advancement, with judges enabled to enter a higher pay category every three years. Based on superior performance in their work, judges will now have the opportunity of benefiting from two, instead of one, extraordinary advancements.

Relations between the courts and the press

257. Court hearings are public with the exceptions stipulated in the Act; but the court is invariably obliged to make public the judgement passed at the trial, including to the press.

258. Because of some practical problems, there was a need for special regulation in regard to the question of who is competent to speak to the press on behalf of the court and comment on judicial proceedings.

259. Under the provisions of the Act, judges shall not give any information to the press, radio and television on matters they are currently dealing with.

260. Only the president of the court or the person designated by him/her may give the media information on matters under the court's consideration. These ordinances are crucial to safeguarding judicial independence and impartiality, also reflecting the firm position that the proper place for a judge to state his/her position relating to the case is in his/her verdict and in the reasons given for his/her judgement.

An additional safeguard of the independence of judges is the operation of judicial bodies involved in the administration of the courts.

261. Act LXI of 1997 contains provisions on the following judicial bodies:

"77. § The judicial bodies involved in the administration of the courts:
a) the plenary session of the Supreme Court, the conference of all judges of the courts of appeal and the county courts (hereinafter collectively referred to as the conference of all judges),
b) the board,

c) the Supreme Court, trial judges, and the judicial councils of county courts.

The conference of all judges

78. § The participants of the conference of all judges: the judges allotted to the Supreme Court, the court of appeal, and the courts operating in the area of the county.
79. § The brief of the conference of all judges:
a) electing delegates for the election of the members of the NCAJ,
b) pronouncing an opinion on the applications of the heads of courts subordinated to the power of appointment of the NCAJ, with the right to initiate their discharge,
c) electing the judicial council and, at least once a year, ordering the judicial council to give an account of its work,
d) deciding on the discharge of members of the judicial council.
80. § (1) The conference of all judges shall be convened by the presidents of the courts enumerated under items a) - c) of 16. §.
(2) The conference of all judges shall be convened upon a motion by one-third of the judges, the president of the court, the judicial council, or the NCAJ.
81. § (1) The conference of all judges has a quorum if it is attended by more than half of the judges. The conference of all judges shall adopt its resolutions by secret ballot.
(2) The vote of two thirds of the attending judges is necessary
(a) for the election of the delegates choosing the members of the NCAJ,
(b) for initiating the discharge of the executives appointed by the NCAJ,
(c) for the election and discharge of the members of the judicial council.
(3) In the cases not enumerated under (2), the conference of all judges shall decide by a majority of votes.

The judicial council

82. § (1) The members and alternate members of the judicial council shall be elected by the conference of all judges for a term of 6 years.
(2) If the combined number of the members and alternate members of the judicial council has fallen to 5, the conference of all judges shall, in a new election, replenish the number of members and alternate members.
83. § The judicial council
a) shall pronounce an opinion in the matter of the appointment, position, discharge, assignment to temporary duties, and transfer of judges,
b) shall pronounce an opinion on the applications of the executives subordinated to the power of appointment of the presidents of the courts enumerated under items a) - c) of 16. § - with the exception of the head of the board, the deputy head of the board, and the presiding judge - and may initiate their discharge,
c) shall submit a proposal for the annual plan of the court and for the use of the budget approved,
d) shall pronounce an opinion on the organisational and operational rules of the court and its plan for the distribution of cases.
84. § (1) The judicial council shall have 5 to 15 members and 3 to 13 alternate members; the number of members and alternate members shall be determined by the conference of all judges.
(2) The judicial council shall elect its president and its deputy president from among its own members.

(3) Persons not eligible to be elected members of the judicial council include
a) persons who are the subject of disciplinary or criminal proceedings or are under the force of a final disciplinary decision,
b) the presidents and deputy presidents of the courts enumerated under items a) - c) of 16. §,
c) persons who are the subject of proceedings aimed at ruling them unfit for service.
85. § (1) Membership of the judicial council shall cease
a) through the termination of the service relations of the judge,
b) through resignation from membership,
c) through discharge from membership,
d) if the cause stated in 84. § (3) occurred at a later date,
e) through the expiry of the term of the commission.
86. § (1) The judicial council has a quorum if its session is attended by more than two thirds of its members.
(2) The judicial council shall adopt its resolutions by a majority of votes. In the event of a tied vote, the president shall have the casting vote. To initiate the discharge of a member or an executive, the votes of two thirds of the attending members are required.
87. § (1) If a member's membership in the judicial council is terminated or if a member is incapacitated on a long-term basis, an alternate member designated by the judicial council shall act in their place.
(2) The general conditions of the cooption of an alternate member are determined by the judicial council.
88. § (1) The judicial council shall hold its sessions as the need arises, but at least as often as four times annually.
(2) Upon a written motion by more than half of the members, the judicial council must be convened.
(3) The session of the judicial council is public for judges; the president of the court shall attend the session as a person having a permanent invitation.
(4) In cases where opinions are pronounced on personnel matters, the judicial council may hold a closed session.

The board

89. § (1) The board is a body of professional judges allotted to a stated jurisdictional division, headed by the head of the board.
(2) The category of cases pertaining to the same jurisdictional division shall be determined by the rules of procedure of the courts.
(3) The board of the Supreme Court shall consist of the judges of the Supreme Court and the heads of the identical boards of the courts of appeal.
(4) The board of the court of appeal shall consist of the judges of the court of appeal, as well as the heads of the identical boards of the county courts pertaining to the venue of the courts of appeal. If there is no identical board at the county court or if it operates as part of another board, members of the board of the court of appeal shall be elected from among the members of the board relevant from the standpoint of the jurisdictional division.
(5) At the county court, the board shall consist of the judges of the county court and the judges elected by them, for a period of 6 years, from among the judges of the local courts operating in the area of the county.
90.§ The board shall
a) make a proposal on the assignment of judges, with the exception of the assignment to the local court,

b) involve itself in the evaluation of the professional activity of judges,
c) comment on the plan for the distribution of cases,
d) make a proposal for the appointment of the head of the board, the deputy head of the board, and the presiding judge,
e) execute the other responsibilities laid down by the statute."

262. In addition to the agencies set forth in the Act on the courts, described above, there are also judicial interest-representations operating at the courts. These include the Hungarian National Judicial Association and the Association of Administrative Judges. These judicial interest-representation bodies operate on the basis of Act II of 1989 on the right of association (Annex No. 26.).

263. 2. Paragraph 3 of the Code of Criminal Procedure (the fundamental principle of the presumption of innocence), in conformity with Article 57 (2) of the Constitution, declares that "no one shall be regarded as guilty until his criminal responsibility has been established by a final decision of a court."

264. 3. The use of the mother tongue is another important fundamental principle embodied in the Code of Criminal Procedure. Pursuant to the Code, everyone -- even those who speak the Hungarian language – may in a criminal procedure, both orally and in writing, use his/her mother tongue through an interpreter. Any such costs shall be borne by the state. (Code of Criminal Procedure para. 8, 80, 218 (1))

265. Paragraph 6 of the Code of Criminal Procedure enshrines the fundamental principle of defence, pursuant to which the authorities are obliged to make sure that the person who is the subject of a criminal proceeding has the opportunity to defend himself in the manner determined by statute.

266. The accused may retain a defence counsel of his/her choice, but the authority – i.e. the court -- may, at his/her request or ex officio, also assign a counsel for his/her defence. The fees of the court-assigned counsel for the defendant shall be paid in advance by the State. (para. 48)

267. On the basis of Act XLI of 1995 amending of Act I of 1973 on the Code of Criminal Procedure, if a juvenile defendant has no authorised defence counsel, the authority is obliged, concurrently with the communication of the reasonable suspicion, to assign a counsel for his/her defence.

268. Today, there are several provisions that ensure a prompt trial. The criminal proceedings against a defendant under preliminary arrest must be conducted in a fast-track procedure, and mention may be made of the time-limits available for pre-trial procedures or for determining the case out of sessions.

269. Even so, cases do, admittedly, take rather long to be settled. Therefore the Government, also having regard to this particular provision of the Covenant, drew up a bill designed to help simplify and accelerate criminal procedure.

270. The provisions of Act XLI of 1995 broaden the possibilities of proceeding out of sessions, while also widening the range of sanctions available in this procedure. According to the law, the judge has 30 days to determine cases to be settled out of sessions. Upon being served an out-of-sessions decision, the defendant may request that the case be heard in court. The court then is obliged to hear the case.

271. The Code of Criminal Procedure guarantees to the accused the right to make motions and observations in every stage of the proceedings and to put questions to the persons examined at the hearing (para. 44(5)). (cross-examine witnesses)

272. The rules relating to witnesses of the Code of Criminal Procedure make no differentiation between the witnesses for the prosecution and the witnesses for the defence -- their rights and obligations in the procedure are the same (para. 62-67).

273. Hungarian law prohibits the extortion of a confession of guilt as well as the extortion of any confession whatsoever.

274. On the one hand, under paragraph 87(2) of the Code of Criminal Procedure, the accused shall be warned at the commencement of his/her examination that he/she is not obliged to make a confession and that he/she may, in any stage of the proceedings, refuse to make a confession. On the other hand, the Criminal Code prescribes the imposition of a prison term of up to 5 years for the extortion of a confession committed by an officer; moreover, ill-treatment inflicted in the course of official procedure is also a criminal offence (para. 226, 227).

275. 4. At present, the criminal laws apply special rules to juvenile offenders. Such is the rule that stipulates that the public shall be excluded from the trial of a juvenile if this is necessary in the interests of the juvenile. (Criminal Code, para. 294(3))

276. It is a fundamental line of the law that, in dealing with juveniles, measures (e.g. reprimand, placing on probation, committal to a reformatory), rather than penalties, must be imposed.

277. The rules governing the imposition of penalties also differ and are substantially more lenient in the case of juveniles.

278. The cases of juveniles are entrusted to prosecutors and judges with special training, and one of the lay assessors must be a teacher.

279. Of major significance is the rule requiring that an official report be obtained on the home background of the juvenile offender, along with a character profile from the school he/she attends or from his/her workplace. In order to reveal the circumstances pertaining to the personality, intellectual development, and living conditions of the juvenile, the carer shall be required to testify.

280. These are the regulations which Act XLI of 1995, mentioned above, supplemented, inter alia, by allowing that, for criminal offences punishable by less than five years' imprisonment, criminal prosecution be deferred by a period of between 1 and 2 years, in the interest of the juvenile's personal development. A new provision requires that, even where the case of a juvenile is connected with that of an adult, only a juvenile court shall be competent to proceed.

281. 5. In regard to Article 14 (5) of the Covenant, mention must be made of the review procedure, introduced by Act LXIX of 1992 on the establishment of the review procedure in Act I of 1973 on the Code of Criminal Procedure, which has been in force as of January 1, 1993.

282. The earlier institution of protest on legal grounds was set aside by Ruling No. 9/1992 of the Constitutional Court, proceeding on the premise that the regulation of the lodging of a protest on legal grounds, as a discretionary right, infringes some fundamental constitutional principles. The right to lodge a complaint on legal grounds against a final court sentence lay with the president of the Supreme Court and the Chief Public Prosecutor. The person concerned in the case only had the opportunity of initiating that a protest be lodged.

283. According to the Constitutional Court, protest on legal grounds blended the unity-of-law application and legal-remedy functions when no constitutional conditions existed for either. Such protest, by virtue of not being predictable, was incompatible with the requirement of legal security pertaining to the rule of law and to the institution of legal force serving their enforcement. Moreover, it infringed the principle of the independence of courts and judges.

284. According to the ruling of the Constitutional Court, the parties must possess an inherent right, subject to stated conditions, to have their grievances adjudicated by the Supreme Court on its merits and with a force that affects them. By contrast, formerly the Chief Public Prosecutor and the President of the Supreme Court would choose at their discretion the cases in which they would lodge a complaint.

285. Under the new provisions, application for a review is an inherent right; the review procedure is an extraordinary legal remedy which affects the parties in all cases: "There is scope for a review of a final decision of a court, reviewed in second instance, and of a final decision -- or a portion of a final decision -- of a second-instance court if the acquittal or conviction of the accused, his/her committal for compulsory medical treatment, or the discontinuance of the proceedings have involved the infringement of penal law provisions; if, because of an unlawful classification of the criminal offence or because of the infringement of some other substantive provisions, an unlawful punishment has been imposed or an unlawful measure has been taken," or if the handing down of the decision has involved an infringement of certain statutorily defined procedural provisions (Code of Criminal Procedure, para. 284, 284/A).

286. The motion of review must be submitted to the first-instance court which has proceeded in the primary case. The court shall, within 30 days, submit the documents to the Supreme Court for consideration. The Supreme Court shall annul the contested decision and remand the case to the lower court, or it shall uphold the decision, but, in certain cases, it may itself pass decisions.

287. 6. The obligation of compensation, formulated in Article 14 (6) of the Covenant, is laid down in paragraph 384, as amended, of the Code of Criminal Procedure. Pursuant to this, a person is entitled to compensation for a prison term served on the basis of a final sentence, for training in a reform school, and for compulsory medical treatment in the following cases: if, by virtue of the case being reopened or by virtue of a review of the case, the individual is acquitted, is given a lighter sentence or placed on probation, or if the proceedings against him/her are discontinued, or if it has been established that he was committed for compulsory medical

treatment without legitimate reason. Such a detailed regulation of the State's obligation of compensation is fully consistent with the way international forums construe this guarantee.

Article 15

288. Subsequent to the democratic transformation in Hungary -- partly in response to obligations arising from the Covenant, which requires states to bring to justice the perpetrators of human-rights violations -- several attempts were made to frame legislation to that end. In that process, the issue of the retroactive force of legislation and limitation were the two major problem areas, inasmuch as the gravest illegalities were perpetrated between 1949 and 1960, acts that have, for the most part, lapsed by now. The following is an outline of the bearing that this legislation has on the retroactive force of the statutes.

289. In November 1991, Parliament enacted legislation on the recommencement of the period of prescription for acts of treason, wilful homicide, and bodily harm with fatal consequences perpetrated between 1944 and 1990 where the State, for political reasons, failed to press criminal proceedings.

290. The President of the Republic, instead of promulgating the law, asked for a review of its constitutionality to be carried out.

291. In its ruling No. 11/1992, the Constitutional Court declared the above statute to be unconstitutional because the vagueness and lack of precision of its wording are prejudicial to the requirement of legal security. According to the Constitutional Court, the renewal of the punishability of criminal offences already lapsed, the extension of the period of prescription of criminal offences not yet lapsed, and the interruption of the limitation of acts of this type by statute are unconstitutional.

292. Under No. 1/1993, Parliament issued a pronouncement of principle on the interpretation of the limitation of punishability. According to this, "the period during which the duly empowered agency of the state fails to exercise its criminal jurisdiction obligatorily prescribed in the Constitution and the constitutional statutes, thereby partially putting the administration of justice in abeyance, may not, from the standpoint of the commission of the criminal offence, be legally regarded as a relevant lapse of time. When extralegal elements (such as party decisions) or lower-ranking statutory provisions in breach of constitutional ordinances (secret directives) eliminate the order to prosecute in the matter or, without lawful reason, permit impunity from criminal justice, this carried the consequence that the legal effect which might generate the limitation cannot come into existence."

293. In its ruling No. 41/1993, the Constitutional Court declared this pronouncement of principle unconstitutional and annulled it, in view of the fact that a pronouncement of principle may not interfere with the life, freedom, and rights of individuals and citizens, and, moreover, because the content of the pronouncement of principle is not statutory interpretation but the framing of penal statutes, i.e., it modifies the Penal Code through statutory interpretation. The Constitutional Court pointed out as a crucial flaw in the pronouncement of principle that it reinterprets the institution of limitation, making limitation subject -- apart from the passage of time -- to the new, general condition that the State fulfil its obligation to prosecute criminals. The Constitutional Court also concluded that the pronouncement of principle runs counter to the provisions of its ruling No. 11/1992, mentioned above.

294. On February 16, 1993, Parliament adopted legislation on the procedure relating to certain criminal offences committed during the National Freedom Fight of October 1956. (This law has never been promulgated)
Paragraph 1 of the Act, based on paragraph 33(2) of the Criminal Code, classed the criminal offences committed during the National Freedom Fight of October 1956 under the category of war crimes, to which the statute of limitations does not apply.

295. In its ruling No. 53/1993, the Constitutional Court found this provision of the Act to be unconstitutional. The Court explained in its opinion that a state which prosecutes and punishes war crimes or crimes against humanity, acts on the basis of a mandate from the international community, in accordance with conditions laid down in international law. It was incumbent on international law, and not on domestic law, to declare, at the time of their commission, acts that pose a threat to the whole of humanity punishable under the law. The law to be applied is independent of the domestic law of the states.

296. Paragraph 2 of the Act established the non-applicability of statutory limitations in regard to criminal offences committed during the National Freedom Fight of October 1956, actions which – based on the provisions of the Convention on the Treatment of Prisoners of War and the Convention on the Protection of the Civilian Population in Wartime, both adopted in Geneva on August 12, 1949 – were to be construed as serious violations of the law.

297. The ruling of the Constitutional Court did not declare paragraph 2 of the Act to be unconstitutional, but it did, with a binding force, specify directions for the application of this paragraph.

298. The ruling called attention to the fact that retroactive non-applicability of statutory limitations, as defined by the Convention on the Non-Applicability of Statutory Limitations of War Crimes and Crimes Against Humanity, adopted in New York on November 26, 1968, applies solely to criminal offences specified in international law.

299. Taking into account the Constitutional Court's ruling, Act XC of 1993 on the procedure relating to certain criminal offences committed during the National Freedom Fight of October 1956, which entered into force on October 30, 1993, was revised and then, on October 22, 1993, was promulgated. Proceedings were instituted in several cases on the basis of this Act. No final decision has been delivered in the cases as of yet; in some cases involving persons accused of crimes against humanity, the first-instance courts returned a guilty verdict, passing sentences in line with that verdict; while other first-instance courts acquitted some persons accused of similar crimes. At the time of reporting, no final judgement has been passed in any of the cases in question.

Article 16

300. There has been no change since the submission of the previous report.

Article 17

301. Act XXXIV of 1994 on the Police defines the legal framework for interventions in private life (right to privacy) by the police (Annex No. 5.).

302. Police officers may enter private homes only in possession of a warrant as well as in the exceptional cases enumerated under paragraph 39, providing for the protection of personal and public safety and for the unfettered operation of the crime-fighting agencies and the administration of justice. As a safeguard for the protection of honour and good reputation, this statute regulates the conditions governing the publication of personal data and pictures of the persons concerned when appealing to the public or reporting on criminal cases.

303. As part of the protection of privacy, Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest (see text in Annex 7) and Act LXVI of 1992 on the keeping of registers on the personal data and addresses of citizens provide for guarantees concerning the use of personal data. The purpose of these Acts is to ensure the right of self-determination in the field of personal data and to bring this into alignment with the public interest attaching to the use of data necessary for the discharge of state and local government functions.
The Acts define the legal aims and conditions of the collecting and handling of data. Act LXVII of 1992 on the protection of personal data and the publicity of data of public interest accords primacy to the rights of the individual, stating in paragraph 4 that "the right to the protection of personal data and the personality rights of the person concerned shall not, unless otherwise provided by statute, be impaired by other interests attached to the handling of data, including the publicity of data of public interest." It is in conformity with this provision that the statute guarantees the right to correction, judicial legal remedy and compensation, while also providing for the appointment of a Parliamentary Commissioner for Data Protection.

304. As regards Article 17 of the Covenant, the protection of data and the use of secret means by the police and the national security agencies are the two areas where major developments have occurred since the Third Report.

Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest (hereinafter Data Protection Act)

305. The aim of the Data Protection Act is to guarantee the protection of human dignity and, in the interest of the free development of the potential of the personality, to establish the legal framework for the restriction of the right to self-determination in the field of information, and, by regulating the publicity of data of public interest, to contribute to the emergence of a social environment where everyone may take part in the conduct of public affairs under the same conditions in terms of the access to information.

306. The two fundamental principles of the Act are: the right of self-determination in the field of information, pursuant to which everyone shall himself control his/her personal data; and the freedom of information, which means the right to acquaint oneself with data of public interest.

307. The right of self-determination in the field of information means that everybody himself/herself decides on the fate of his/her personal data, that is -- as a general rule -- personal data may be registered and used only with the consent of the person concerned. Everybody has a right to know who uses his/her personal data, where, when, and for what

purposes. This right may be restricted only on legitimate grounds, for compelling reasons of public interest or in the interest of the person concerned.

308. One of the key guarantees of the exercise of the right of self-determination in the field of information is attachment to a purpose -- i.e. that it is permissible to handle personal data only for a specifically stated and legitimate purpose, and only to the extent and for the length of time required by the attainment of this purpose. The requirement of attachment to a purpose cover all the stages of data handling, including data transmission. Therefore the Act excludes the possibility of linking, arbitrarily and to an inordinate degree, data handled for different purposes. The linking is independent of the manner in which it is done and of the instruments involved.

309. For citizens and their organisations to be able to exercise control over the discharge of state and local government functions, they have to possess sufficient information on these questions. In other words, they should have, without any special authorisation or permission, access to such information of public interest as relate to the functioning of the bodies elected by them, the use of public funds etc. Therefore the statute prescribes that the responsible agencies be obliged to help gather this type of information and to make available to anyone the data handled by them.

310. Publicity may be restricted only by law, having regard to the protection of personal data or to state and service secrets. Access to the data of particular public and judicial proceedings is subject to special regulations. Authentic registers shall, by their very nature, be freely accessible to anyone.

311. The principal guarantee of the enforcement of the Act is the enforcement of one's rights before the courts. There is access to the courts both in the event of a violation of the protection of personal data and in the event of a denial of access to data of public interest.

312. The Act, in the interest of the increased protection of the rights regulated in it, stipulated the election of a special Parliamentary Commissioner (Parliamentary Commissioner for Data Protection, or "Ombudsman for Data Protection", whose responsibilities include monitoring the observance of the law, investigating specific complaints, and providing for the maintenance of a data protection register. (Act LXIII of 1992, para. 23-27)

313. It follows from the rights of the Parliamentary Commissioner for Data Protection that, in his/her sphere of activity, no data handling, personal data or data of public interest may be concealed from him/her. However, at certain state agencies, the Parliamentary Commissioner for Data Protection may, due to requirements pertaining to the external and internal security of the State, investigate only in person.

314. The Data Protection Act, a framework statute, safeguards the aforementioned constitutional rights, defining the fundamental principles and rules of procedure which must be observed in every instance of data handling. After the promulgation of the Act, there followed a continuous review and modification process of the body of legislation regulating the keeping of resisters by the various agencies and the specific instances of data handling, an exercise still in progress. Thus, for instance, the rules relating to the data handled by the Police and the National Security agencies are embodied by the Police Act -- see below in connection with the use of secret means -- and Act CXXV of 1995 on the National Security Service, but there is

also some further sectoral data protection legislation. The adoption of the National Security Act caused the lapse of Act X of 1990 on the temporary regulation of the authorisation of special secret-service means and methods.

315. a) The use of secret means by the Police is regulated by section VII, entitled "Collecting Secret Information", of Act XXXIV of 1994 on the Police.

316. The Act provides an open regulation of the activity of the police investigating authorities aimed at collecting secret information. Within this framework, it sets out in general terms the aims of collecting secret information, thereby establishing its scope and, at the same time, delimiting the use of the methods in question.

317. The Act specifies the methods of secret information gathering which fall within the class that does not require special statutory safeguards. Accordingly, the Police may, in carrying out its crime-fighting functions, enlist informers or confidential persons; gather information concealing the police-related character of the operation; issue and use a cover document, set up and maintain a front enterprise in order to conceal and protect any persons co-operating with it and the police-related character of the operation; observe and collect information about any person who is suspected of having committed a criminal offence and any person maintaining contact with him/her, as well as about premises, buildings, and other facilities, any sector of terrain and road-section, vehicle, and event that may be linked with the criminal offence; record the findings by technical devices serving to record audio, visual or other signals or traces; carry out deliveries under supervision; and, in order to identify the perpetrator of a criminal offence or in the interest of obtaining evidence, set a trap that does not inflict injury or impair the health of the persons involved.

318. The other principal branch of secret information gathering is the collecting of information by secret means and methods subject to judicial authorisation. The statute specifies the secret means and methods applicable by the police; namely, secret searches, checking of correspondence, wire-tapping, and observation, by means of visual and audio monitoring devices, of premises or other enclosed spaces.

319. A common feature of the techniques in question is that, in every instance, their use results in the impairment of the right to the inviolability of the private home or in that of the right to the protection of privacy, enshrined in paragraph 59 of the Constitution. The Act ensures that these rights shall be restricted only in the cases set out in the Act and only on the basis of a judicial decision issued in the presence of the conditions regulated therein.

320. The Act specifies the categories of criminal offences where there is a special interest involved in clearing up the cases, warranting -- provided the other statutory conditions are also present -- the use of secret means and methods. As plainly emerges from the exhaustive enumeration, the use of special devices is admissible solely in the event of suspicion of criminal offences posing a heightened threat to society.

321. The Act enumerates, and makes subject to special authorisation, the cases where the Police are entitled to carry out secret searches, make recordings, and check correspondence, postal deliveries, and telephone communications. Accordingly, secret searches, checking of correspondence, tapping of telephones, and eavesdropping on premises or other enclosed

spaces are permissible for the purposes of substantiating a suspicion of a criminal offence punishable, under the Criminal Code, by five years' imprisonment or more.

322. The Police may use secret means and methods only if the lawful crime-fighting objective cannot be attained by other means of evidence, from public sources, or from another authority. The existence of the statutory conditions and the legitimacy of the use of secret means shall, in every case, be checked or assessed by an agency independent of the executive, i.e. a court.

323. b.) Act CXXV of 1995 on the National Security Services, similarly to the provisions of the Police Act, specifies the forms of intelligence activities that are not subject to special authorisation (e.g. requesting information, collecting information in forms that conceal the national security-related character of the operation, setting up and maintaining front organisations).

324. Under the Act, the secret monitoring of homes and other premises not open to the public, the checking of mail and other postal matter, and the interception and recording by technical means of communications transmitted via the public telecommunications networks are forms of secret information gathering subject to external authorisation.

325. Under the provisions of the Act, the National Security Services may carry out secret information gathering activities listed under the latter categories only subject to authorisation by a court or by the Minister of Justice.

326. There are in international practice numerous examples of states distinguishing between information gathering activities carried out for the purposes of crime prevention and crime detection, both closely linked with crime-fighting and similar information gathering carried out for national security purposes.

327. Having regard to this organising principle, the Act provides for a divided system of authorisation.

328. In regard to the detection of specific criminal offences, authorisation for secret information gathering -- similarly to the arrangements of the Police Act -- must come from a judge designated for this particular task by the president of the (Budapest) Metropolitan Court.

329. Authorisation for other activities carried out in the course of general information collecting must be obtained from the Minister of Justice. The authorisation procedure of the Minister of Justice is subject to the control of Parliament's National Security Committee.

Article 18

330. In regard to freedom of conscience and religion, there are three new developments in Hungarian law:

1) Act XXXII of 1991 on the rules of the restitution of properties previously confiscated from the Hungarian churches on various grounds, the prime object of which is to establish the physical and financial conditions necessary for the functioning of the churches: the Act

regulates in detail the method of reclaiming property previously in church ownership, the relevant procedure of the Government, and the way of settling any disputes that might arise;

2) Act LXXII I of 1993, amending Act IV of 1990 on freedom of conscience and religion, with a view to ensuring the opportunity to practise one's religion in the armed forces; under the new statute, "persons performing their military service may, in conformity with the rules of operation of the military organisation and the performance of national service duties, freely practise their religion.",

3) Act XXXII of 1993, relating to the amendment of the enforcement of punishment, which, touching upon 118. § of the Enforcement of Punishment LD of 1979, inserts a new subparagraph into that paragraph, declaring that persons under preliminary arrest "shall have freedom to choose, to manifest, and to practise their religious or conscientious belief." (para. 118, (j)).

331. Moreover, it should be pointed out that Resolution 22/48 of 1993 of the Human Rights Committee interpreting freedom of thought, conscience and religion was also published in Hungarian. (Acta Humana, 1994. No. 17. p. 84.).

332. Practice of religion is also guaranteed in police holding facilities, provided it does not interfere with the interests and rules of operation of the investigating authority, the court or the institution and/or with those of the criminal proceedings. The minister or other representative of the church/denomination must be given the opportunity to perform his/her duties as carer and, upon producing his/her credentials from a church superior, must be allowed entry. Administrators of the detention facility must provide a room for the practice of religion or psychological counselling. Both the detainee himself and the minister may initiate the contact. In the detention facility, the detainee and the minister may communicate without interference, with the detainee free to keep with him/her such devotional objects as do not endanger the security of custody. Detainees are also entitled to practise their religion in groups. However, current conditions in detention units make it difficult to create conditions permitting psychological or religious counselling for individuals or groups.

333. The freedom of asylum-seekers and refugees to practise their religion is also embodied in the Law-Decree on their legal status (Law-Decree No. 19 of 1989). At refugee reception stations and temporary shelters, administrators of the facilities concerned are responsible for ensuring to the individuals in question adequate conditions for the practice of their religion - not merely by permitting them to freely leave the station/shelter and attend religious services in the given locality, but also by setting up prayer-rooms and allowing churchmen with permanent Office for Refugees and Migration entry cards to make visits and offer their services freely. A problem requiring further efforts is the provision of proper meals for those of Muslim faith and the logistics of catering for them during certain festivals (e.g. Ramadan) at the stations/accommodation facilities. This is partly a financial question (offering alternative menus involves increased expenses) and partly an organisational task. In this regard, substantial assistance is received from the NGOs working in Hungary.

334. The statutory regulation concerning the practice of religion of persons performing their regular military service in the Border Guards dates from 1993 (Act CX of 1993). It is the Human Service, working at the Border Guards, that has the responsibility of creating, in close collaboration with the Army Chaplains' Service, the conditions necessary for the exercise of

that right. The schedule of religious services is available to conscripts at the Border Guard Directorates, with the opportunity to attend church services outside the barracks. Designated pastors of the Army Chaplains' Services visit the directorates and local branches in conformity with their own regulations.

The rights of parents in institutions of public education

335. Act LXXIX of 1993 on public education gave parents individual and collective powers. Parents are entitled to the free choice of the institution, and they may acquaint themselves with the pedagogical programme of the kindergarten, school or boarding school at which they intend to have their child enrolled. This right of the parent also extends to the decision on whether to enrol their child in an ideologically neutral school or one with an ideological affiliation, such as a church school. In state-run and local government-controlled educational-instructional establishments, an ecclesiastic legal person may, on parental demand, organise non-compulsory religious instruction. The parent may also decide whether his/her child belonging to a national or ethnic minority should study in his/her mother tongue or in Hungarian or, as the case may be, in both languages. The parent is entitled to seek information in the educational-instructional institutions, may make proposals, and may seek assistance for the education of his/her child from the teacher. Parents may, with a view to asserting their interests, set up collectives working as part of the school. The representatives of the parents take part in the work of the school or the boarding-school committee, thereby taking part in the preparation and implementation of institutional decisions.

Article 19

336. In regard to the mass media, the enactment of Act I of 1996 on radio and television broadcasting (see text in Annex 8) has occurred, ensuring diversity of information, freedom of expression and dealing with issues of ownership. The Act is aimed at eliminating political or government interference and at providing remedy for any injury that might be inflicted on private interests as well as regulating social control.

337. Freedom of access to data is embodied by Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest, which stipulates that "Agencies and persons discharging state or local governmental functions shall, in matters falling within their province -- including matters relating to their management -- help in providing the public with prompt and accurate information." If there is a failure to comply with a request for data of public interest, the person who has made the request may apply to the courts for legal remedy. Moreover, in the interest of the effective protection of the right to the publicity of data of public interest, the Act provided for the appointment of a Parliamentary Commissioner for Data Protection and Data Protection Register.

Article 20

338. The legal definitions of Hungarian criminal law fundamentally comply with Article 20 of the Covenant and with the relevant provisions of other international conventions ratified by

Hungary (i.e., Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination).

339. In recent years, Hungary, too, has experienced a number of violent crimes involving an offence against the person, a violation of human dignity and of public order against members of different national, racial or religious groups. The perpetrators were, even under the earlier regulations, liable, for instance, for assault perpetrated with malicious intent (aggravated assault) or disorderly conduct. Indeed, in 1993, the Penal Board of the Supreme Court issued an opinion regarding this question (Opinion No. 299), pursuant to which a conviction for the crime of assault shall lie where persons belonging to skinhead groups physically assault, because of their national, ethnic or racial background, individuals of Roma or Arab origin, or coloured skin.

340. The Declaration adopted at the October 7, 1993 Vienna summit by the heads of state and government of Council of Europe member states envisaged an immediate review of the internal legal systems of the member states in a battle against racial hatred, xenophobia, anti-Semitism, and intolerance.

341. These circumstances prompted the President of the Republic of Hungary to initiate, in order to accelerate and assist the work of drafting legislation, a review and amendment of legislation relating to criminal offences of this type in the Criminal Code. It was action along these lines that produced the enactment of Act XVII of 1996, amending Act IV of 1978 on the Criminal Code. The 1996 Act embodies the modifications necessary for effectively combating criminal offences committed because of the victim's membership in a particular national, ethnic, racial or religious group and for creating harmony with international conventions.

342. Under the Act, paragraph 155(1) of the Criminal Code was replaced by the following provision:

"(1) Anyone who -- with the aim of the total or partial extermination of a particular national, ethnic, racial or religious group --

a) kills the members of the group;
b) inflicts severe physical or mental injury on members of the group because of their membership in the group;
c) forces the group to live under conditions of life which threaten to destroy the group or certain members thereof;
d) takes such measures as are aimed at preventing births within the group;
e) carries children belonging to the group off to another group
shall be guilty of a criminal offence and shall be liable to imprisonment of a term ranging between ten and fifteen years or to life imprisonment."

343. Paragraph 157 of the Criminal Code has been replaced by the following regulation:

"Apartheid

157. § (1) Anyone who -- with the aim of organising and maintaining domination by a particular racial group of people over another racial group of people, or with the aim of the systematic oppression of another racial group--
a) kills members of a particular racial group or particular racial groups;
b) forces a particular racial group or particular racial groups to live under conditions of life by which he seeks to achieve the total or partial physical annihilation of the group or the groups concerned
shall be guilty of a criminal offence and shall be liable to imprisonment of a term ranging between ten and fifteen years or to life imprisonment.
(2) Anyone who commits any other crime of apartheid shall be liable, on account of a criminal offence, to imprisonment of a term ranging between five and ten years.
(3) The punishment shall be ten to fifteen years in prison or a life sentence if the apartheid crime stated in subparagraph (2) has resulted in grave consequences.
(4) For the purposes of subparagraphs (2) and (3), crimes of apartheid shall be taken to mean those defined in Article 2, a/ii, a/iii, c), d), e), and f) of the International Convention on the Suppression of the Crimes of Apartheid, adopted by the General Assembly of the United Nations in New York, on November 30, 1973, promulgated by Law-Decree No. 27 of 1976."

344. As 174/B. § of the Criminal Code, the Act introduces, as a new criminal offence, the crime of violence against a national, ethnic, racial or religious group. Anyone who maltreats another or compels him/her, by force or threats, to do or not to do something or endure something because of his/her membership, or supposed membership, in a particular national, ethnic, racial or religious group shall be held guilty of the said crime. The draft legislation imposes a penalty in excess of that assigned to the basic form (i.e., imprisonment of a maximum of 5 years), a prison term of 2 to 8 years on anyone who commits the crime by force of arms or bearing arms, causing substantial impairment of interests, inflicting suffering on the victim, acting as part of a group or in conspiracy.

345. In paragraph 212(1) of the Criminal Code, the Act introduces a new offence by prescribing punishment for the founder, organiser or leader of a social organisation whose aim is directed at inviting others to commit a criminal offence; or whose activity amounts to a criminal offence or to an invitation to the commission of a criminal offence.

346. Paragraph 269 (2) of the Penal Code establishes a new offence by mandating a punishment of a maximum 5 years in prison for organising or financing an event inciting to hatred against the Hungarian nation or a particular national, ethnic, racial, religious or other group or an event with the potential to create hatred against the group in question or to cause panic.

Article 21

347. There was no change in the period under review in the regulation of the right of peaceful assembly (Act III of 1989, Annex No. 27, Constitution 62. §. (1)); it was on the basis of this that the Minister of the Interior issued the decree on the police responsibilities necessary for maintaining order at public events (15/1990. (V. 14.) BM r. [Interior Minister's order]). Between 1994-1997,, there were 15 cases where restrictions based on considerations of law-enforcement were placed on the right of peaceful assembly. Fourteen of the prohibitive decisions were applied in Budapest, with 3 enforced in the provinces. In 11 cases, the refusal

of permission was justified on the grounds of a danger of undue disruption of traffic; in one case, on the grounds of severe endangering of the operation of the courts; and in one case, on the grounds of severe endangering of the operation of Parliament. On one occasion, the Budapest Metropolitan Police Department refused permission for the staging of an event after a court had ordered the disbanding of an organisation calling itself the World-National and People's Supremacist Party because of its unconstitutional activities. The judicially ordered dissolution of the party being in progress, the holding of the event would have amounted to a criminal offence. Finally, in another incident, a foreigner who did not possess a residence permit intended to stage a peace demonstration in the city of Csongrád; here the decision to ban the demonstration was justified on the grounds of the absence of a residence permit.

Article 22

348. In internal regulation, the right to freedom of association is enshrined

- in paragraphs 4, 63, and 70/C of the Constitution and Act II of 1989 on the right to freedom of association; and

- with a declarative character, in Act XXII of 1992 on the Labour Code. (These regulations of the Labour Code are of a declarative character as the right to freedom of association also follows from the conventions ensuring fundamental human rights (International Covenant of Economic, Social, and Cultural Rights, International Covenant of Civil and Political Rights, European Convention on Human Rights, European Social Charter, and Labour Conventions 87, 98, and 151 of the ILO, the Constitution, and the Association Act.)

349. The Constitution and the Association Act formulate the right to freedom of association as a fundamental liberty that everyone is entitled to – rights which are recognised by the Republic of Hungary, and of which it ensures the unimpeded exercise.

350. Under paragraph 15 of the Labour Code, all employees and employers shall have the right to form -- under the conditions laid down in the Association Act and with a view to promoting and protecting their economic and social interests -- interest-representation organisations in combination with others, to join the organisation of their choice subject only to the rules of the organisation in question, or *not to join* such organisations.

351. The interest-representation organisations are entitled to establish or join federations or alliances, including international federations. Paragraphs 26-27 represent additional guarantees of the afore-mentioned rights. Under these provisions:

a) the employer may not require an employee to declare his/her trade union membership (a special provision, inasmuch as paragraph 77 of the Act imposes the general obligation on the employer that he/she may oblige the worker to make only such declarations or to fill out only such forms as do not infringe his/her personality rights, and which provide information relevant to the entry into a contract of employment);

b) the employment of the employee shall not be made conditional on whether or not he/she is a member of a trade union, or whether he/she terminates his/her earlier membership in a trade union, or whether he/she agrees to join the trade union designated by the employer.

352. The employment of the employee shall not be terminated nor shall the employee be placed at any other disadvantage or made to suffer any other loss on account of his/her membership in a trade union or his/her trade union activity.

353. In accordance with the provisions of the international conventions referred to, the term "trade union", irrespective of the names of particular trade unions, is to be taken to include all such organisations which have, as their primary aim, the protection and representation of the interests of employees connected with the employment.

354. a) As far as the formation of trade unions is concerned, there is a single, uniform regulation covering all employees (no special regulation is applied to any single employee group).

Under the Association Act, the requirement for the formation of a social organisation (including a trade union) is that at least ten of its founding members should announce the formation of the organisation, having established its statutes and elected its administrative and representative organs (para. 3(4)). Following the formation of a social organisation, an application must be submitted for the registration of the organisation by the court. Registration cannot be refused if the founders have complied with the conditions stipulated in the Act. It is through registration that the trade union acquires its legal personality.

355. b) There are no legal or practical restrictions on the formation of trade unions, or on joining or leaving a trade union.

These rights are safeguarded by the statutory provisions referred to above.

These rights, guaranteed by the Labour Code, are also protected by some other rules of the legal system. Under paragraph 228/A(1) of the Criminal Code, "anyone who hinders another, whether by force or threats, in the exercise of his right to freedom of association or assembly, shall be guilty of a criminal offence and shall be liable to imprisonment of up to 3 years."

356. c) On the basis of the international conventions referred to, paragraph 13 of the Association Act, and paragraph 15 (2) of the Labour Code, social organisations are entitled to form or join federations or alliances, including international federations.

357. In order to make sure that the trade union is able to carry out its activities properly, the Labour Code provides for a special dispensation in regard to working hours to be given to the trade union official. The reduction in working hours depends on the number of trade union members who have a contract of employment with the employer. The scale of the reduction of working hours is, unless otherwise agreed, two hours per month after every three trade union members who have a contract of employment with the employer, up to 200 trade union members; where there are 201 to 500 trade union members, the reduction rate is one-and-a-half hours per month; while in places where the figure is in excess of 501 trade union members, the reduction is one hour per month. (Under the earlier regulations, the special dispensation in regard to working hours given to officials was, unless otherwise agreed, two hours per month after every three trade union members who had a contract of employment with the employer.) The detailed rules referred to above were established by Act LV of 1995, amending the Labour Code.

358. The use by particular trade union officials of the special dispensation in regard to working hours and the scale of the relevant reduction are determined by the trade union; it lies within the competence of the trade union organ to decide both the scale of the preferences to be granted and which trade union members are to benefit from the preferences.

359. The Labour Code, in conformity with the international convention, provides for the protection of trade union officials.

360. Accordingly, the assignment, initiated by the employer, to a new workplace of an employee filling an elected trade union post or the termination of his/her employment by the employer through the ordinary procedure of giving notice are subject to the preliminary consent of the immediate superior trade union body. Where special notice of dismissal is to be given or legal consequences provided for are to be applied against such officials, and, moreover, if an official employed in a job on a non-permanent site is to be allotted to a new worksite, the appropriate trade union body must be notified in advance.

361. The aim of the provision is the protection of trade union officials; therefore it covers only those organisations which are truly capable of performing activities relating to the defence of interests. In view of this, the above provision applies only to the representative trade unions. Officials and members of non-representative trade unions are protected by the general provisions regarding the prohibition of discrimination.

362. The free operation of trade unions is further guaranteed by the objection procedure.

Under paragraph 23 of the Labour Code, the trade union having representation at the employer is entitled to submit an objection against unlawful measures by the employer directly affecting the employees or their interest-representation bodies.

If the employer does not agree with the objection, conciliation is in order. If the conciliation fails to produce any results within seven days, the trade union may, within five days counting from the establishment of lack of result, apply to the courts.

Pending the successful completion of the conciliation procedure or a final judicial decision, the measure objected to shall not be enforced or its enforcement must be suspended.

There is no scope for objection if the employee may institute a legal dispute against the measure.

363. The statute on strikes (Act VII of 1989) provides for restrictions in the sphere of the employment of persons serving in the Police and in the Armed Forces. Under paragraph 3 (2), "there is no scope for strikes in the agencies of the administration of justice, the armed forces, the armed services, and the law-enforcement agencies."

364. The participation in politics and public life of persons serving on a professional basis in the Border Guards is subject to the same restriction, i.e., they cannot be members of a party, cannot engage in political activities (Constitution Article 41/B), and cannot be elected mayors (Act LXIII of 1994, para. 33/A).

365. The Police Act imposed an additional restriction on professional officers (Act XXXIV of 1994, paragraph 7 (10)). A police officer may be a member of a trade advocacy or interest-representation body and may assume an office therein, and he/she shall not, on that score, suffer any prejudice in his/her service relations; but he/she is obliged to report to the head of the police agency his/her membership in any social organisation unrelated to his/her occupation. The superior in question may issue a decision prohibiting the continuance or establishment of membership if it is inconsistent with, or perhaps poses a danger to, the office of a police officer and the duties of service. A complaint may be lodged or an application for judicial review may be submitted against the decision.

Article 23

366. **1.** According to paragraph 15 of the Constitution, the Republic of Hungary protects the institutions of marriage and the family. Also, paragraph 67 (3) of the Constitution stipulates that the state responsibilities relating to the situation and the protection of families and of young people are embodied in special provisions. These internal statutes and provisions are stipulated in two Acts -- namely, Act IV of 1952 on marriage, the family and guardianship, as subsequently amended, a piece of legislation currently in force (hereinafter: Family Law Act), and Act XXXI of 1997 on the protection of the child and the administration of guardianship affairs (hereinafter Child Protection Act; see text in Annex 21).

367. The two above-mentioned Acts address in detail the institution of the family, as one of the fundamental institutions enforcing and protecting the rights of the child. The Family Law Act obliges parents to care for and rear their child in the family, and provide the conditions necessary for his/her full development; while the Child Protection Act establishes the rules based on which the state, the local governments, and the natural and legal persons responsible for the protection of children help, by specified provisions and measures, the enforcement of the rights and interests of children and make sure that the conditions necessary for the discharge of parental responsibilities exist. This Act also stipulates that the system of institutions described above shall be the framework within which to act to prevent and end the exposure of children to risk; to provide substitution for the care and rearing of children who, for whatever reason, have been separated from their families, and ensure their healthy personality development; and to promote the integration into society of young adults who no longer benefit from the assistance of the child protection agencies.

368. The Labour Code contains the following rules relating to the protection of families. Under paragraph 90 (1) of the Code, the employer may not, through the ordinary process of giving notice, terminate the employment during the period stated below and during 30 days following that period:

b) registration for sickness benefit for the purpose of attending on a sick child or unpaid holidays given for the same purpose or for the purpose of attending on or caring for a close relative in the home;

c) pregnancy, the three months following childbirth (postnatal care), and maternity leave, as well as unpaid holidays given for the purpose of caring for the child.

369. Paragraph 107 of the Labour Code exempts the employee from the obligation to work

b) on the death of a near relative, for a minimum of two working days on each occasion.

It should be noted in connection with this rule that, for the days in question, the employee shall be paid his/her average wages or a so-called absence fee, of a standard rate and applied to his/her particular category.

370. Under paragraph 139 (1) of the Labour Code, in cases where a close relative of an employee requires long-term care or nursing (hereinafter: care) for a period likely to exceed 30 days, the employer is obliged, at the employee's request, to give the employee leave without pay for the duration of the care, for a maximum period of two years, for the purpose of providing home care for his/her close relative and provided that the employee does the caring in person. The provision of long-term home care and the justification thereof shall be certified by the medical practitioner of the person requiring care.

371. Under paragraph 139 (2) of the Labour Code, "close relative" is to be taken to include: the spouse, the lineal relative, the lineal relative of the spouse, an adoptee, the stepchild and the foster child, the adoptive parent, the stepparent and the foster parent and the male partner.
2-3. The Family Law Act declares that married partners shall, in the marriage and in family life, be equal. Under the law, marriage may be contracted by a man and a woman of legal age. The marriage is constituted if the parties declare their intention to contract marriage, collectively and in person, in front of the registrar.

372. Minors may contract marriage only subject to prior permission from the public guardianship authority. Even where there are compelling reasons, the public guardianship authority may only give permission for the marriage if the applicant has completed his/her sixteenth year. The public guardianship authority shall decide on whether to grant or refuse permission after hearing the parent (legal representative). Any marriage concluded by the applicant without permission from the public guardianship authority or prior to his/her attainment of his/her sixteenth year is null and void. After the attainment of majority, only that spouse shall, in the absence of a marriage licence, be entitled to bring an action for annulment in whose person the cause for the invalidity consisted. Such action may only be brought within six months counting from the attainment of majority, and the party entitled must bring action for the annulment of the marriage in person. Subject to the consent of his/her legal representative, even the entitled party of restricted disposing capacity may himself bring action; at the same time, if the entitled party is the spouse, there is no need for the consent of the legal representative.

373. **4.** When drafting the amendment of the Family Law Act and the Child Protection Act, legislators took full account of the obligations regarding the enforcement of the child's interests and rights as laid down in the Convention on the Rights of the Child. Both Acts lifted into their provisions as fundamental principles the general rule whereby the applier of the law (parent, public guardianship authority, the court, etc.) shall, when making their decisions, proceed with due regard for the interests and rights of the child (Family Law Act para. 2, and Child Protection Act para. 1 (1)).

374. Under the Family Law Act, as amended, the separation of the parents also entails the enforced separation of one parent and the child, because, as a result of the dissolution of the marriage

and the placement of the child, the parent's right to parental control is, by virtue of the law, in abeyance. The automatic, enforced suspension of parental control affects not only the rights of the parent but also those of the child. Therefore, under the Family Law Act, as amended, the parents may agree to an arrangement for the joint exercise of parental control even after their separation and the dissolution of the marriage, irrespective of which of them is given custody of the child. Joint parental control is an option only in cases where it lies in the interests of the child and where both parties desire such an arrangement.

375. The new Family Law Act also amended the conditions for altering child custody arrangements. Until recently, any change in the custody of a child depended on an unambiguous change in the emotional attachment of the child and its concurrent reorientation towards the parent living apart, as well as on an unfavourable change in the environment the child had lived in up to that point, i.e., in the circumstances of the parent rearing the child. This set of conditions was fulfilled only rarely, and only in an unjustifiably small number of cases were child custody arrangements altered. The amended statute represents an enhanced safeguard that, in the future, the criteria for changing custody arrangements serve the genuine interests of the child. There is no change in the regulations in that the right to bring a lawsuit for the placement of the child or for a change in the custody arrangements remains with the parent, the public guardianship authority, and the prosecutor.

376. Important for the protection of the interests of the child is the harmonisation of the principles of family policy and the child welfare provision and activity attached to the social amenities. The Child Protection Act provides that the child -- or, on behalf of the child, the family -- shall, commensurately with his/her situation and needs, have access to the necessary welfare provisions. The statute defines as fundamental the right of the child to be reared in a family and not to be separated from his/her biological, foster or adoptive parents except in his/her own interest, in cases and in a manner specified by statute. This enables families to decide freely on the use of the benefits offered through the instruments of family policy; also, intervention in the life of the family and the restriction of the freedom to decide are permissible only to the degree necessary in the interest of the child.

Article 24

377. **1.** Paragraph 54 (1) of the Constitution declares that, in the Republic of Hungary, every human being has an inherent right to life and to human dignity, of which no one shall be arbitrarily deprived.

378. Under paragraph 1 of Act LXXIX of 1992 on the protection of the life of the foetus, the foetus and the pregnant woman are entitled to support and protection. The conceived child is conditionally legally competent, is an expectant of stated property rights, and has a legal representative.

379. The Criminal Code imposes penalties on such artificial or unlawful abortion of pregnancy where the foetus is killed.
Any person who aborts someone's foetus shall be guilty of a criminal offence. The act is deemed to be more serious if the abortion is committed
a) for commercial gain;
b) without the consent of the woman;

c) in a way that inflicts severe physical injury or endangers life, or if the abortion causes death.

380. One of the fundamental conditions of the right to life and to survival is that the pregnant woman should receive appropriate medical attention. Regulation of this area is provided, on the one hand, by the Labour Code, which provides that the pregnant or child-bearing woman be entitled to a twenty-four-week maternity leave. In fixing the date for the leave, care shall be taken that, if possible, four weeks of that period should precede the likely date of childbirth.

381. Under Article 70/A (1) of the Constitution, the Republic of Hungary ensures to all individuals within its territory human and civil rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, the Constitution also states the requirement that the Republic of Hungary, by measures aimed at the elimination of inequalities of opportunity, help the attainment of equality before the law.

382. In compliance with the Constitution and international practice, the Labour Code prohibits any unwarranted differentiation among employees. Accordingly, no discrimination shall be practised, in respect of the employment, between employees on the grounds of their sex, age, nationality, race, origin, religion, political conviction, their membership in an employees' interest-representation organisation or their activity connected therewith, or any other circumstances unconnected with the employment.

383. Under Article 16 of the Constitution, the Republic of Hungary devotes special attention to the security of living conditions, the instruction, and education of young people, and the protection of their interests in general.

384. Act LXXIX of 1993 on public education specifically states that, in public education, no discrimination of any kind shall be practised on the grounds of race, sex, nation, national or ethnic group, conscientious, religious or political belief, origin, property status or the character of the organisation responsible for the maintenance of the school. An example of positive discrimination is a provision of the statute which states that the child is entitled, depending on the financial situation of his/her family, to receive on request free or discounted meals and school equipment in the educational-instructional facility; and, moreover, to be exempted, wholly or in part, from the payment of the costs stated in this statute as expenses to be borne by the children; or to be granted permission to defer payment or pay in instalments.

385. Under the Criminal Code, anyone who inflicts severe physical or mental injury because of the membership of the victims in national, ethnic, racial or religious group shall be guilty of a criminal offence. Anyone who, in front of a large audience, stirs up hatred against the Hungarian nation or a particular nationality; or a particular people, denomination or race or particular groups of the population, shall be guilty of the crime of incitement to hatred against a community.

386. Any discrimination against private individuals on the grounds of their sex, race or religion represents an impairment of the rights that the Civil Code defines as rights ensured to the human being.

387. The State Administrative Procedure Act also addresses the prohibition of discrimination. According to the statute, both Hungarian and foreign individuals shall enjoy full equality

before the law, and their cases shall be dealt with without any differentiation and with partiality. In the state administrative procedure, everybody may, verbally or in writing, use his/her mother tongue; and no one shall be placed at a disadvantage because of his/her unfamiliarity with the Hungarian language.

388. The Education Act declares the right of students to apply to the student council for representation of their interests or to request, in accordance with the provisions of the statute, remedy for the grievance they have suffered. Representing a step forward in respect of the students of schools and boarding-schools is a provision in the statute permitting an arrangement whereby a teacher of the school entrusted by the students and, similarly, a student of the school or his/her parent may assist the work of the student council, and whereby this person may act on behalf of the student council.

389. The Act on adoption was amended through the inclusion of a provision disallowing adoption in cases where it runs counter to the interest of the minor. Adoption represents a fundamental change in the life of the child, resulting in new ties of family relationships. Therefore, in the future, the adoption of a child who has attained his/her fourteenth year -- i.e. is of restricted disposing capacity -- is, even where the other necessary conditions have been fulfilled, subject to the consent and the wishes of the child himself.

390. Pursuant to the ministerial decree on public guardianship authorities, particular functions of public guardianship authorities, and the public guardianship authority procedure, the public guardianship authority may
a) take action in the interest of the minor; in particular;
b) where the legal representative is an alcoholic, a substance abuser or an excessive consumer of prescription drugs, prescribe committal for compulsory medical treatment; or
c.) entrust the child to institutional or state care;
d.) issue, in order to ascertain entitlement to family allowance, a certificate testifying that one of the parents has, at least for two months, failed to provide for the child living in his/her household.

391. The above language in the statutory provision does not rule out the possibility of the public guardianship authority acting on behalf of the child in other matters. However, the lack of a general obligation has frequently led to the public guardianship authority taking measures running counter to the interests of the child. This is what happened in a particular case where, despite a Constitutional Court decision, it was impossible to act in the best interest of the child as there was no remedy available after the public guardianship authority had endorsed a lawsuit to be filed to contest the presumption of paternity without having previously considered the interests of the child.

392. Under the Act on Criminal Procedure, such persons may be required to testify as witnesses as have knowledge concerning the fact to be established. A child may only be asked to testify if his/her testimony may contain evidence presumably impossible to obtain from any other source. During the testimony of a child or a juvenile, his/her legal guardian and teacher may, subject to the discretion of the authority, also be present.

393. Section XII of the Constitution of the Republic of Hungary, as subsequently amended, embodies the fundamental rights and duties of citizens. Violators of the fundamental rights

enshrined in the Constitution are liable to criminal prosecution. Act IV of 1978 on the Criminal Code, as subsequently amended, contains several new provisions in regard to children and juveniles. Regarding accountability, the law differentiates, in the case of individuals below age 18, between children and juveniles. Hungarian criminal law identifies the upper limit of children's age at 14 years at the time of commission. That is the age at which children normally complete their primary school studies, acquiring the elementary notions necessary for social coexistence. No punishment may be inflicted on a child who, at the time of the commission of the act, had not yet attained his/her fourteenth year. The public guardianship authority may take defensive and protective measures against children. Thus the instruments appropriate for altering the unlawful behaviour of a child are to be found, first and foremost, within the system of child welfare and youth protection, rather than within that of criminal law.

394. Under Act I of 1968 on regulatory offences, as amended (hereinafter: Regulatory Offences Act), no one may be held accountable for a regulatory offence who had not attained his/her 14th year at the time of the commission of the act. For the purposes of the provisions concerning regulatory offences, a juvenile is a person who had attained his/her 14th year but had not yet passed his/her 18th year at the time of the commission of the regulatory offence. If the regulatory offence has been committed by a juvenile who is of school-going age or receives regular school instruction, the public guardianship authority may take defensive and protective measures because of the regulatory offence. A fine may only be imposed on a juvenile who has means of support or an income of his/her own.

395. **2.** It is enacted by Act that everyone has a right to receive and bear a name. Hungarian citizens have a last name and a first name. Following birth, the registrar immediately enters the birth in the register of births, where the last name and first name of the child are recorded. Following birth, the competent local government issues, on the basis of the register of births, a birth certificate, which records the place and date of birth, the place of origin, the last name and first name of the child, his/her sex, the last name and first name of the parents, their place of birth and domicile, and, as appropriate, the foreign citizenship of the child or that of the parents.

396. The unlawful use by a person of the name of another represents an impairment of the right to a name. The Family Law Act provides that, in important questions affecting the fate of the child -- including the imposition or changing of the name of the underage child -- the separated parents shall, after placement of the child, jointly exercise their rights even in the absence of joint parental control.

397. If one or both of the parents of the child are unknown or their identity cannot be established, the public guardianship authority shall, in the course of measures set out in the Family Law Act, establish all such data as are necessary for the issuance of the birth certificate of the child.

398. If both parents of the child are unknown, measures shall be taken immediately after his her birth -- and if the identity of the father cannot be established, ex officio measures shall be taken at any time upon the mother's request, or after the attainment by the child of its third year, to make sure that persons treated as, respectively, the parents or the father of the child are entered in the register of births. Competence to perform this procedure lies with the public guardianship authority.

399. The personal identity certificate is an official certificate which certifies the personal identity and the statutorily defined particulars of the citizen. Upon reaching the age of 14, the personal identity certificate must be supplemented with a photograph and the bearer's signature. The certificate is issued by the notary public of the local government which has jurisdiction in the place of residence; in the case of a newborn, the mother's place of residence. The personal identity certificate certifies the personal identity of the holder as well as his/her personal and other data.

400. A Hungarian citizen, when abroad and when travelling to a foreign country, certifies his/her personal identity and citizenship with his/her passport, which is an official certificate.

401. 3. The Constitution declares that, in the Republic of Hungary, no one may be deprived of his/her Hungarian citizenship. Act LV of 1992 on citizenship (hereinafter: Citizenship Act) provides for the unconditional enforcement of the right of the child to acquire citizenship through birth.

402. Having regard to the principle of descent, the child whose family legal status is regulated after his/her birth, at a subsequent date, must also be recognised as a Hungarian citizen, with retroactive force. In other words, recognition of the parent as a Hungarian citizen must be the result of a certain family-law procedure (a declaration of acknowledgement of paternity, subsequent conclusion of marriage).

403. In certain cases, the child who cannot acquire citizenship through the principle of descent becomes a Hungarian citizen by virtue of being born in Hungary; the Citizenship Act considers a child born in Hungary of stateless parents resident in Hungary and a child found in Hungary to be Hungarian citizens.

Article 25

404. The Covenant reserves the exercise of the rights enshrined in Article 25 to the citizens of the states parties. Pertinent to this Article is Act LXI of 1994 on the amendment of Act X of 1949 on the Constitution of the Republic of Hungary.

405. Article 2 of Act LXI of 1994 stipulates that every Hungarian citizen of full legal age has the right to stand for election in parliamentary and local government elections and in elections of minority representatives and, provided he/she stays within the territory of the country on the day of the elections, to vote, as well as to take part in national and local referendums and popular initiatives. The statute contains modifications as compared to the regulations currently in force: a permanent place of residence in Hungary, as a condition of the exercise of the right to vote, has been replaced by "residence within the territory of the Republic of Hungary", while, in the case of local government elections, the language "non-Hungarian citizen permanently settled in Hungary", has been substituted for "non-Hungarian citizen residing as an immigrant in the territory of the Republic of Hungary".

406. Article 3 of the Act, in conformity with Article 25 of the Covenant, enacts the universal and equal suffrage of voting citizens, which they exercise by direct and secret ballot both in the parliamentary and in the local government elections.

407. Another enactment to be linked with Article 25 of the Covenant is Act LV of 1993 on Hungarian citizenship (see text in Annex 9), inasmuch as the existence of citizenship is a prerequisite for the exercise of political rights.

408. Accordingly, paragraph 1 of the Act enacts that "no distinction shall be made between Hungarian citizens on the basis of the title of the origination or acquisition of citizenship". The termination of citizenship may occur only in strictly defined circumstances -- i.e. in the cases citizenship is resigned.

409. Certain changes were made, in the reporting period, in the rules governing the right to vote in parliamentary and municipal elections. Following the establishment of multi-party democracy and the rule of law, and based on the experience gained at the elections, amendments were made, in 1994, to the Act on the election of members of parliament (Act XXXIV of 1989; hereinafter: Election Act), a piece of legislation first applied in 1990. The amendment did not affect universal and equal suffrage and the secrecy of the ballot; it merely contained certain technicalities (e.g. by-elections can be held only once annually; the raising of the 4 per cent threshold to 5 per cent for the admission of parties into Parliament). It is a testimony to the broad extent of the right to vote that 75.86 per cent of the population have the vote, a ratio surpassing the international average.

410. There is a very narrow class of individuals who do not possess the right to vote. It includes those Hungarian citizens who are in the charge of a guardian owing to their incapacity or restricted disposing capacity; those who, by a final judgement, have been banned from taking part in the conduct of public affairs; those who are serving a prison term based on a final court sentence; and those committed, by a final judgement, for compulsory medical treatment in a criminal case (Election Act para. 2(2)). An additional feature of the legislation is that the Hungarian citizen possessing the right to vote must be staying in the territory of the country because, for technical reasons, it is not feasible to vote while staying abroad.

411. What justified the amendment of the statute governing the election of deputies to the local governments (Act LXIV of 1990; hereinafter: Local Government Election Act) was not primarily the experiences of the 1990 elections, but rather the adoption, in the intervening period, of a decision on the direct election of mayors and general assembly chairmen. On the other hand, Parliament adopted the statute on national and ethnic minorities (Act LXXVII of 1993; see Annex 11), creating, for persons who have Hungarian citizenship and belong to one or the other of the 13 minorities defined by statute, the possibility of forming, in accordance with a special system of election, local governments of their own. Thus was adopted the re-regulation of the right to vote in municipal elections (Act LXII of 1994; see text in Annex 11).

412. A special feature of the right to vote in local government elections is the fact that it embraces a broader class of individuals than those entitled to vote in parliamentary elections, inasmuch as the right to take part in municipal elections, also designed to promote participation in local public life, is ensured not only to Hungarian citizens but also to persons permanently residing in Hungary and possessing an immigration permit. Through this procedure, Hungary enforces, among others, the provisions of the document of the Council of Europe on the participation of migrants in local public life. (Local Government Election Act, para. 2 (1)-(2)).

Article 26

413. The Constitution ensures to all persons staying within the territory of the Republic of Hungary human and civil rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (para. 70/A). The Constitution embodies the prohibition of the unlawful expulsion of foreigners, declaring that:

58. § (2) "An alien staying lawfully in the territory of Hungary may be expelled therefrom only in pursuance of a decision reached in accordance with law."

414. It protects equality before the law:

57. § (1) "In the Republic of Hungary, all persons shall be equal before the courts, and, in the determination of any charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by an independent and impartial tribunal established by law."

415. Paragraph 5 of the Labour Code, reformulated by Act XXII of 1992, enunciates the prohibition of discrimination among the fundamental principles. Accordingly, no discrimination shall be practised, in respect of the employment, between the employees on account of their sex, age, nationality, race, origin, religion, political conviction, membership in an employees' interest-representation organisation or their activity connected therewith, or any other circumstance unconnected with the employment. At the same time, distinctions arising unequivocally from the character or nature of the work do not fall within the definition of discrimination. In regard to this latter provision, the Board for Labour Law of the Supreme Court, in its Board Opinion No. 97, held that differentiation based on all the essential and lawful conditions of employment that might be taken into account does not fall within the concept of discrimination.

416. In contrast with the uniform regulation which obtained earlier, special legislation was adopted, when redrafting of the Labour Code, on the legal status of public servants. The new statute, Act XXIII of 1992, also takes into account the international obligations of the Republic of Hungary. The preamble to the Act states that one of the prerequisites for a democratic public administration commanding the universal respect of society is that the conduct of public affairs should be in the hands of non-partisan, lawfully operating, and impartial public servants possessing up-to-date professional skills. One of several measures adopted to help attain this goal is a provision in the new legislation requiring that public servants pass, within a specified period of time, a basic examination in public administration and, subsequently, a special higher examination incorporating both Hungarian and international provisions prohibiting all forms of racial discrimination.

417. Act I of 1992 on cooperatives, promulgated on January 20, 1992, provides that, in accordance with the principle of open membership, no discrimination shall be practised, in the recruitment of members and in the definition of the rights and obligations of members, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

418. Act XXXII of 1993 on the amendment of Act II of 1979 on the enforcement of punishments and measures declares, in general terms, the prohibition of discrimination between convicted

persons. Paragraph 2(3) on the Enforcement of Punishment LD of 1979 declares that "no discrimination may be practised between convicted persons on the grounds of their national and ethnic background, religious or political belief, social origin, sex, or property status."

419. Under the statute, a convicted person is entitled, inter alia, to freely choose, to manifest and to practise his/her religious or conscientious conviction. An additional right relevant with respect to the Covenant is the right of a convicted person of foreign nationality to apply to the diplomatic representation or consular mission of his/her state or to communicate with a representative thereof.

420. In respect of Article 26, see also the Thirteenth Periodic Report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, submitted to the Centre for Human Rights by the Hungarian Government on March 17, 1995, and debated by the Committee on March 6-7, 1996.

Article 27

421. Under the Constitution of the Republic of Hungary:

"68. § (1) The national and ethnic minorities living in the Republic of Hungary are part of the power of the people: they are constituents of the state.

(2) The Republic of Hungary extends protection to the national and ethnic minorities. It ensures their collective participation in public life, the cultivation of their own culture, the use of their native language, instruction in the native language, and the right to use one's name in one's own language.
(3) The statutes of the Republic of Hungary ensure the representation of the national and ethnic minorities living in the territory of the country.
(4) The national and ethnic minorities may form local and national self-governments."

422. Act LXXVII of 1993 on the rights of national and ethnic minorities contains provisions that go a long way further than the rights enshrined in Article 27 of the Covenant.

423. On the occasion of the adoption of the legislation, the Government of the Republic of Hungary published the following statement:

"The Government of the Republic of Hungary, regarding it as a landmark event, welcomes the enactment by Parliament, on July 7, 1993, by a 96 per cent vote, of the law on the rights of national and ethnic minorities.

424. In an earlier statement made in the course of the preparations, the Government of the Republic of Hungary expressed its commitment to regulating at the statutory level, on the basis of the European system of norms, the rights of national and ethnic minorities, and it summarized the comprehensive principles capable of ensuring to the maximum degree the free development of national and ethnic minorities.

425. The Government is convinced that the success of the framing of the statute is in no small measure attributable to the fact that the minorities, as constituents of the state, took part via their representatives as equal negotiating partners in the process of drafting the legislation. The accommodation reached by the political forces has resulted in the enactment of a comprehensive piece of legislation resting on a broad consensus, which ensures new opportunities, frameworks, and rights to the citizens belonging to Hungary's minorities and their communities.

426. The principle of self-government, cultural autonomy, the recognition of minority rights as group rights, and the ensuring of freedom to choose one's identity are cardinal elements of the legislation -- elements, indeed, which are unprecedented and worthy to be pointers to the future even by the standards of international practice.

427. The Government of the Republic of Hungary is taking further steps to improve the situation of national and ethnic minorities. In particular, it intends to take steps, at the earliest opportunity, to ensure their independent parliamentary representation and to develop further the opportunities for their schooling and education. The minority self-government structure about to be introduced will promote, both at the local and at the national level, the enhanced protection and more effective representation of special interests. Self-administration in education and instruction creates opportunities for the minorities to preserve and evolve their own institutions.

428. The Act cannot be a substitute for the activity of the minorities; at the same time, it is suitable for redressing the disabilities arising from their minority status, helping the minorities preserve their mother tongue, develop their culture, and reinforce their sense of identity. The statute promises to be a good instrument for ensuring that the minorities survive as communities.

429. The Act, designed to ensure a fuller enforcement of the rights of national and ethnic minorities, is primarily intended to benefit those citizens and communities of the Republic of Hungary that come from a minority background; however, at the same time it also serves the development of Hungarian democracy. Hungary's policy towards the minorities is not, in any respect, dependant on the policies pursued by other countries towards ethnic Hungarian minorities. Nonetheless, the Republic of Hungary is aware of the fact that the observance of minority rights also has some consequences in the fields of foreign and security policy. Therefore Hungary is convinced that the new legislation, the formulation of legal safeguards resting on the most noble European values, will have great significance and a major impact also beyond the borders of Hungary."

430. In regard to the Covenant, the following fundamental features of the legislation ought to be mentioned:

431. 1. The Act, in conformity with the fundamental principle of the protection mechanism of human rights, declares, amongst the basic provisions, the prohibition of discrimination, namely, that all forms of discrimination against the minorities are prohibited (para. 3(5)). But the statute, in keeping with the modern development of the international protection of human rights, implements, already at the level of basic principles, the concept of positive discrimination by declaring that the realisation of the minorities' equality before the law shall be assisted by measures aimed at eliminating inequalities of opportunity (para. 6).

432. 2. The Act stipulates that a minority right is a human right to which both individuals and communities are equally entitled (para. 3(1)).

433. 3. It is an essential feature of the Minority Act that it formulates the provisions contained therein as obligations of the state (see paras. 9 and 51). Its actual implementation is served by section VIII of the Act, which appropriates the material resources necessary for the practical enforcement of minority rights.

434. 4. Act LXXV of 1994, amending Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest, and the implementation of particular provisions of Act LXXVII of 1993 on the rights of national and ethnic minorities, established the institution of Parliamentary Commissioner for National and Ethnic Minority Rights. Under paragraph 20(2) of Act LXXVII of 1993, as amended, the Parliamentary Commissioner shall be elected by Parliament on the basis of the proposal of the President of the Republic, who shall previously consult the opinion of minority self-governments nation-wide. The Parliamentary Commissioner shall proceed in matters falling within the scope of the statute. (See the report of the Parliamentary Commissioner of his/her activity in Annex 24.)

435. Thus, there is every reason to conclude that the Hungarian minority legislation is not only consistent with prevailing international legal norms and standards relating to the international protection of human rights, but it also fulfils the requirements whose appropriate international regulation is -- primarily in Europe – is about to take shape.

436. In respect of Article 27 of the Covenant, see also the Thirteenth Periodic Report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, submitted to the Centre for Human Rights by the Hungarian Government on March 17, 1995, and debated by the Committee on March 6-7, 1996.

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